

No. 15354

United States
Court of Appeals
for the Ninth Circuit

A. E. STOKES and ESTELLE STOKES,
Appellants,
vs.

JAMES H. REEVES and ISHAM P. NELSON,
JR., Doing Business as Reeves and Nelson,
Appellees.

Transcript of Record

Appeal from the United States District Court for the
District of Montana, Billings Division

FILED

FEB - 8 1957

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

STERLING M. WOOD,
Securities Building,
Billings, Montana,
For Appellants.

FRED DUGAN,
309 Electric Building,
Billings, Montana;

YALE B. GRIFFIS,
207 Empire State Bank Building,
Dallas, Texas,
For Appellees.



In the District Court of the United States in and
for the District of Montana, Billings Division

Civil Action No. 1570

JAMES H. REEVES AND ISHAM P. NELSON,
JR., d/b/a REEVES & NELSON,

vs.

A. E. STOKES AND WIFE, ESTELLE
STOKES,

COMPLAINT ON ACCOUNT

Comes now James H. Reeves and Isham P. Nelson, Jr., d/b/a Reeves & Nelson, Certified Public Accountants, plaintiffs, complaining of A. E. Stokes and wife, Estelle Stokes, defendants, and for cause of action respectfully show as follows:

I.

That jurisdiction of this cause of action is founded on diversity of citizenship and amount in controversy. That plaintiffs are citizens of Dallas, Dallas County, Texas, and defendants are citizens of Sidney, Montana. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars and no/100 (\$3,000.00).

II.

Defendants owe plaintiffs, for professional services rendered to the defendants as Certified Public Accountants, Three Thousand Thirty-eight Dollars and Twenty-two Cents (\$3,038.22) according to the account hereto annexed as Exhibit "A."

III.

That in accordance with Revised Statutes of the State of Texas, Article 2226, this claim was presented to the defendants for payment on the date of September 16, 1953; that thirty (30) days have expired since such presentation and the claim has not been paid or satisfied, and plaintiffs are, therefore, entitled to a reasonable attorney's fee for bringing this suit, which fee plaintiffs allege an amount of Seven Hundred Fifty Dollars and no/100 (\$750.00) is reasonable.

Wherefore, plaintiffs demand judgment against defendants, jointly and severally, for the sum of Three Thousand Thirty-eight Dollars and Twenty-two Cents (\$3,038.22), plus Seven Hundred Fifty Dollars (\$750.00) attorney's fees, and costs.

/s/ FRED N. DUGAN,

/s/ YALE B. GRIFFIS,

Attorneys for Plaintiffs.

[Title of District Court and Cause.]

SUMMONS

To the Above-Named Defendants:

You are hereby summoned and required to serve upon Fred N. Dugan, plaintiff's attorney, whose address is 309 Electric Building, Billings, Montana, an answer to the complaint which is herewith served upon you, within twenty (20) days after service of

this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated December 29, 1953.

[Seal] H. H. WALKER,
Clerk of Court;

By /s/ ELIZABETH C. McKEE,
Deputy Clerk.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 18, 1954.

United States District Court for the District of
Montana, Billings Division

Civil Action File No. 1570

JAMES H. REEVES AND ISHAM P. NELSON,
JR., d/b/a REEVES & NELSON,

Plaintiffs,

vs.

A. E. STOKES AND WIFE, ESTELLE
STOKES,

Defendants.

ALIAS SUMMONS

To the Above-Named Defendants:

You are hereby summoned and required to serve upon Fred N. Dugan, plaintiffs' attorney, whose

address is 309 Electric Building, Billings, Montana, an answer to the complaint which herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: January 18, 1954.

[Seal] H. H. WALKER,
Clerk of Court;

By /s/ ELIZABETH C. McKEE,
Deputy Clerk.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 16, 1954.

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
A. E. STOKES

Comes now the defendant, A. E. Stokes, in the above-entitled action, by and through the undersigned, his attorneys, and for his amended answer to plaintiffs' complaint, filed by leave of court, alleges:

First Defense

That he denies each, all and every of the allegations of paragraphs I, II and III of plaintiffs' complaint.

Second Defense

That on or about the 9th day of September, 1952, plaintiffs and this answering defendant made and entered into an agreement wherein and whereby the plaintiffs agreed to prepare certain income tax returns for this answering defendant for a total service charge of \$1500. and that no other or further agreement for professional services has been made heretofore by this answering defendant with the said plaintiffs.

Third Defense

That the court does not have jurisdiction of the subject matter in the above-entitled action by reason of the allegations of the Second Defense in this answer contained, which are made a part hereof by reference.

Wherefore, this answering defendant prays that the said action may be dismissed as to him and that he may recover his costs of suit herein incurred.

STERLING M. WOOD,
R. E. COOKE,
F. D. MOULTON,
W. H. BELLINGHAM,

By /s/ STERLING M. WOOD,
Attorneys for Defendants.

Service of copy acknowledged.

[Endorsed]: Filed August 23, 1954.

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
ESTELLE STOKES

Comes now the defendant, Estelle Stokes, in the above-entitled action, by and through the undersigned, her attorneys, and for her amended answer to plaintiffs' complaint, filed by leave of court, alleges:

First Defense

That she denies each, all and every of the allegations of paragraphs I, II and III of plaintiff's complaint.

Second Defense

That the only professional services rendered heretofore to this answering defendant by the plaintiffs were for the preparation of her individual tax returns for 1951 and 1952, and at an agreed price of \$250 for such services, and that on or about the 9th day of September, 1952, this answering defendant paid the said plaintiffs in full for the services by them rendered in the preparation of such reports.

Third Defense

That the court does not have jurisdiction of the subject matter in the above-entitled action by reason of the allegations of the Second Defense in this answer contained, which are made a part hereof by reference.

Wherefore, this answering defendant prays that the said action may be dismissed as to her and that she may recover her costs of suit herein incurred.

STERLING M. WOOD,
R. E. COOKE,
F. D. MOULTON,
W. H. BELLINGHAM,

By /s/ STERLING M. WOOD,
Attorneys for Defendant.

Service of copy acknowledged.

[Endorsed]: Filed August 23, 1954.

In the District Court of the United States in and
for the District of Montana, Billings Division

Civil Action No. 1570

JAMES H. REEVES AND ISHAM P. NELSON,
JR., d/b/a REEVES & NELSON,

Plaintiffs,

vs.

A. E. STOKES AND WIFE, ESTELLE
STOKES,

Defendants.

JUDGMENT

This cause came on for trial before the Court, sitting without a jury, on December 5, 1955, both parties appearing by counsel, and the issues having

been tried, and the Court having rendered decision for the Plaintiff in the sum of \$2,000.00, together with interest thereon at the rate of six per cent (6%) per annum, from the 31st day of July, 1955, and for an attorney's fee in the amount of \$400.00, and for Plaintiffs' costs of suit herein incurred, it is hereby

Ordered, Adjudged and Decreed that the Plaintiffs, James H. Reeves and Isham P. Nelson, Jr., d/b/a Reeves & Nelson, recover of and from the Defendants, A. E. Stokes, and wife, Estelle Stokes, the sum of \$2,000.00, with interest at the rate of six per cent (6%) per annum from the 31st day of July, 1953; an attorney's fee in the sum of \$400.00, and Plaintiffs' costs of action hereby taxed in the sum of \$93.25.

Dated this 4th day of September, 1956.

/s/ CHARLES N. PRAY,
United States District Judge.

[Endorsed]: Filed and noted September 4, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that A. E. Stokes and Estelle Stokes, Defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered in the

above-entitled action on the 4th day of September, 1956.

Dated this 1st day of October, A.D. 1956.

/s/ STERLING M. WOOD,

Attorney for Appellants, A. E.

Stokes and Estelle Stokes.

[Endorsed]: Filed October 3, 1956.

[Title of District Court and Cause.]

BOND FOR COSTS OF APPEAL

We, the undersigned, jointly and severally acknowledge that we and our personal representatives and successors are bound to pay to the above-named Plaintiffs the sum of Two Hundred Fifty Dollars (\$250.00).

The condition of this bond is that whereas the Defendants, A. E. Stokes and Estelle Stokes, have appealed to the Court of Appeals for the Ninth Circuit, by their Notice of Appeal duly filed, from the judgment of this court entered September 4, 1956, if the said Defendants shall pay all costs adjudged against them if the appeal is dismissed or the judgment is affirmed or such costs as the appellate court may award if the judgment is modified, then this bond to be void, but if the Defendants fail to perform this condition, payment of the amount of this bond shall be due forthwith.

Dated October 1st, 1956.

A. E. STOKES and
ESTELLE STOKES,

By /s/ STERLING M. WOOD,
Their Attorney-in-Fact,
Defendants and Appellants.

[Seal] UNITED STATES FIDELITY
& GUARANTY COMPANY,

By /s/ [Indistinguishable],
Attorney-in-Fact, Surety.

[Endorsed]: Filed October 3, 1956.

[Title of District Court and Cause.]

STIPULATION

Pursuant to the provisions of Paragraph (f) of Rule 75 of the Federal Rules of Civil Procedure, it is hereby stipulated by and between the undersigned attorneys for the respective parties to the above-entitled action that the parts of the record, proceedings and evidence to be included in the record on appeal in the above-entitled action to the Court of Appeals for the Ninth Circuit shall be as follows, to wit:

1. The summons issued in said action.

2. The pleadings consisting of the complaint and the amended answers thereto of the respective defendants.

3. The transcript of the trial proceedings on December 5, 1955, as set forth in the transcript prepared by the court reporter and covered by his certificate bearing date of April 4, 1956, together with all the exhibits.

4. The judgment made and entered in said action.

5. The notice of appeal of the defendants from the aforesaid judgment, together with the bond on appeal, and this stipulation.

Dated at Billings, Montana, this 19th day of October, A.D. 1956.

/s/ STERLING M. WOOD,
Attorney for Defendants.

/s/ FRED L. DUGAN,
Attorney for Plaintiffs.

[Endorsed]: Filed October 20, 1956.

In the District Court of the United States, in and
for the District of Montana, Billings Division

Civil No. 1570

JAMES H. REEVES, et al.,

Plaintiff,

vs.

A. E. STOKES, et al.,

Defendant.

Before: Honorable Charles N. Pray.

December 5, 1955

Appearances:

MR. FRED DUGAN,

For Plaintiff.

MR. STERLING WOOD,

For Defendant.

Proceedings

The above-entitled cause came on regularly for trial in the Federal Building at Billings, Montana, on December 5, 1955, before the Honorable Charles N. Pray, presiding, without a jury.

Whereupon the following proceedings were had and done, to wit:

The Court: Call the next case.

The Clerk: No. 1570, James H. Reeves and others vs. A. E. Stokes and others for trial.

The Court: How about this case, gentlemen. are you ready to proceed this morning?

Mr. Dugan: Plaintiff is ready for trial, your Honor.

Mr. Wood: Defendants are ready, your Honor.

The Court: Perhaps you might make a brief statement for the record, Mr. Dugan, and then Mr. Wood can make a short statement of his position.

Mr. Dugan: May it please the court, and Mr. Wood. Your Honor, this cause is one filed by James H. Reeves and Isham P. Nelson, Jr., doing business as Reeves and Nelson, a co-partnership, against A. E. Stokes and his wife, Estelle Stokes. It is a complaint on an account and sets forth essentially that the jurisdiction is founded on diversity of citizenship, that the plaintiffs are citizens of the [4*] State of Texas, of Dallas County, Dallas, and the defendants are residents and citizens of Sidney, Montana, at the time of the filing of the complaint, and the matter in controversy exceeds \$3,000.

And it is set forth that the defendants owe the plaintiffs for professional services rendered as Certified Public Accountants the amount of \$3,038.22 according to the exhibit annexed to the complaint which constitutes a statement of account.

And the complaint further sets forth that in accordance with a particular provision of the Statutes of the State of Texas, Article 2226, the claim was presented for payment and 30 days elapsed since such presentation and the claim has not been paid and that the plaintiffs are therefore entitled to attorney's fees for bringing the suit, alleging the

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

reasonable amount for attorney's fees to be \$750.00.

To that complaint there have been now amended answers filed separately on behalf of the defendant of which there is general denial of all allegations of the complaint and a defense raised by the defendant, A. E. Stokes, that on the 9th day of September, 1952, that the plaintiffs and defendant, individual defendant, A. E. Stokes, agreed that the plaintiffs would prepare the federal income tax statements for an agreed sum of \$1,500, and no more, and a [5] third defense alleged that the court does not have jurisdiction by reason of the allegations of the second defense that the amount is less than \$3,000; and a separate defense on behalf of the defendant Estelle C. Stokes denying all allegations of Plaintiffs' complaint and alleging that the only professional services rendered for this defendant, Estelle Stokes, was for the preparation of individual income tax returns for the years 1951 and 1952 at an agreed price of \$250; and that on the 9th day of September, 1952, that sum was paid by that defendant to these plaintiffs, and further, that the third defense that the amount in controversy is not \$3,000.

Your Honor, we will attempt to show in this cause an account stated for services rendered by the plaintiffs to the defendants and implied agreement to pay the amount exhibited in the account stated. We will also produce for the judicial notice to be taken by the court the appropriate Texas statute.

The Court: Mr. Wood.

Mr. Wood: I see no occasion for making a statement now, your Honor.

Mr. Dugan: Plaintiff calls as his witness, himself.

JAMES H. REEVES

one of plaintiffs, was duly sworn and testified as follows: [6]

Direct Examination

By Mr. Dugan:

Q. Will you state your name, please, and address and occupation?

A. James H. Reeves, Dallas, Texas. I am a C.P.A.

Q. Were you such C.P.A. during the period of 1946 to 1953? A. Yes, sir.

Q. Do you have your certificate with you of your license? A. Yes, sir.

Mr. Wood: We concede that without your putting it in there that he is a C.P.A.

Q. And his associate is also a C.P.A. at the time of filing of the action?

Mr. Wood: Meaning the other plaintiff in the lawsuit?

Mr. Dugan: Yes.

Mr. Wood: Yes.

Q. (By Mr. Dugan): During the latter part of the period 1946 to 1953 were you associated in a partnership with Mr. Isham Nelson, Jr.?

A. Yes.

Q. In a firm of CPA's? [7]

Q. And that is the other plaintiff named in the action? A. Yes, sir.

(Testimony of James H. Reeves.)

Q. Do you know the defendants, Stokes?

A. I know Mrs. Stokes.

Q. Did I understand you to say Mrs. Stokes?

A. I know Mr. Stokes.

Q. For how long have you known Mr. Stokes?

A. Since 1946.

Q. What is Mr. Stokes occupation, if you know?

A. He is an oil and gas operator; oil and gas lease operator to my knowledge.

Q. The date of the filing of the suit herein which was in December, 1953, as the record reveals——

Mr. Wood: That is 1954.

Mr. Dugan: 1953, I believe.

Mr. Wood: It is marked 1954.

Mr. Dugan: I may be in error on that.

The Court: You mean, Mr. Dugan, does he know Mr. A. E. Stokes, the defendant in the case? You didn't establish that.

Mr. Dugan: I thought I had.

Q. (By Mr. Dugan): Mr. Reeves, do you know the defendant in the case, A. E. Stokes?

A. Yes. [8]

Q. Would you point him out to the court?

A. That is Mr. Stokes sitting there.

Q. Sitting next to the window? A. Yes.

Q. And did I understand you to say you don't know Mrs. A. E. Stokes? A. No; I do not.

Q. You stated you have known Mr. Stokes since '46? A. '46.

Q. Now, the complaint in this action is marked

(Testimony of James H. Reeves.)

as having been signed December 29, 1953, and I ask you whether at that time and for a short period time at least prior to that time what was his residence if you know?

A. P.O. Box 276, Sidney, Montana.

Q. His residence was Sidney, Montana?

A. Yes, sir.

Q. And did you address mail to him there?

A. Yes, sir.

Q. Did you receive replies from mail addressed to there? A. Yes.

Q. Did you telephone him and reach him in Sidney, Montana? A. Yes.

Q. Do you know where the defendants were served with process in this case? [9]

A. Sidney, Montana.

Q. Do you know where they were living say in the year '52?

A. I first called them at the Lalonde Hotel in Sidney, Montana, and I got him there for a while, and after a while they began referring me to another telephone number; they said he moved to an apartment.

Mr. Wood: The only reason I said something about January, 1954, is the papers on the alias summons were served on January 18, 1954, that was the only discussion I had.

Q. Those apartments at which you reached the defendants by phone were in Sidney, Montana?

A. Yes, sir.

(Testimony of James H. Reeves.)

Q. And that was during the year 1953?

A. Yes.

Q. And shortly before the filing of the suit here of perhaps a period of months before the last knowledge you have of the defendants was at that point, was it? A. Yes.

Q. Prior to the time in 1953 did you have any business transactions with the defendants?

A. Yes; Mr. Stokes engaged me to file income tax returns and do audit work for him.

Q. The last part of your statement wasn't clear.

A. Mr. Stokes engaged me to file income tax returns [10] and to do audit work for him.

Q. When did these business transactions originate?

A. They actually originated in 1946; he asked me advice from time to time and I talked to him on the telephone and I actually got the work in hand to do in April of 1952.

Q. What was the general nature of the business to do at that time?

A. Well, I filed, I did audit work and filed income tax returns for Mr. Stokes for his first wife and his second wife and for two partnerships he was concerned in over the period 1946 to 1952, inclusive.

Q. Including among those returns were returns for the defendant, Estelle Stokes?

A. Yes. I believe I called her Evelyn a moment ago; it is Estelle Stokes.

Q. The name of his present wife is Estelle

(Testimony of James H. Reeves.)

Stokes? A. Yes; that is right.

Q. Did you start the preparation of these returns then in April, 1952? A. April, 1952.

Q. And when did you complete them?

A. April 3rd, 1953.

Q. Why did it take such a long period to prepare these returns?

A. Well, the years involved, well a period of time had [11] gone by and the business transactions were complicated and it was frequently necessary to contact the company involved and call Mr. Stokes in order to get information from him to enable us to proceed.

Q. Was it important that these returns be prepared with the utmost accuracy?

A. Yes; it was, because the returns were delinquent.

Q. Preliminary to your preparation of these returns did you have a conversation with either of the defendants regarding the terms of the payment for your services? A. Yes; I did.

Q. When was this and where was it?

A. Well, I went to Gainsville, Texas, with my partner, Mr. Nelson, to pick up the work from Mr. Stokes on April 16th, 1952.

Q. And did you go to a residence or office address of the Defendant?

A. Yes; he had his office in his home at that time.

Q. Did you go to his home? A. Yes.

Q. Who was present there besides yourself and

(Testimony of James H. Reeves.)

Mr. Nelson? A. Mr. Stokes.

Q. What was the conversation with respect to terms of payment, if anything?

A. I told Mr. Stokes at the time I thought the amount of [12] work was considerable and that I couldn't afford to carry it and that I would appreciate it if he would make interim payments as the work progressed.

Q. As your work on this progressed did you make any demands for payment pursuant to your understanding? A. Yes, sir.

Q. In what form did you make these demands?

A. Orally and by letter and also on long distance telephone.

Q. Prior to September, 1952, did the defendants make any payments on account? A. No.

Q. On September 15, 1952, did you receive a payment? A. Yes; I received \$250.

Q. Prior to that time you had received no payments at all?

A. No; I received a lot of promises but no money.

Q. After September, 1952—15th, 1952, did you receive any payments on account? A. No, sir.

Q. When did you complete the returns?

A. April 3, 1953.

Q. At that time did you make any demand upon the defendants for payment?

A. Yes: I saw Mr. Stokes and there were con-

(Testimony of James H. Reeves.)

ferences with he and my partner concerning the terms of payment. [13]

A. That was at 207 Empire Bank Building, Dallas, Texas, in my office.

Q. And at a later time did you again present statements of your account?

A. Yes, sir; I omitted the telephone calls which I should have charged him with and I rendered an amended bill in July of 1952.

Q. 1950 what? A. 1953.

Mr. Wood: He did what? He rendered a bill?

Q. Will you answer it again?

A. I rendered Mr. Stokes an amended bill in July of 1953 and included the telephone charges that I should have included in the original bill.

Q. Do you recall the date of the month?

A. I don't believe I could recall the date accurately; it was in July, I know.

Q. How was this statement rendered to the defendants? A. We mailed it to them.

Q. And to whom was it directed?

A. Mr. and Mrs. A. E. Stokes, Post Office Box 276, Sidney, Montana.

Q. Who mailed it? A. My secretary.

Q. At whose direction? [14] A. Mine.

Q. Where was it mailed?

A. Mailed in the mail box in the bank building.

Q. Before the mailing did you examine the statement, the envelope and the contents that were in the envelope? A. Yes.

(Testimony of James H. Reeves.)

Q. And you say they were addressed to what address?

A. Mr. and Mrs. A. E. Stokes, P.O. Box 276, Sidney, Montana.

Q. Did the envelope carry a return address?

A. The engraved business envelope for myself and my partner did carry a return address.

Q. It did carry a return address? A. Yes.

Q. Which was what?

A. 207 Empire Bank Building, Dallas, Texas.

Q. Had you previously addressed mail to the defendants at Post Office Box 276, Sidney, Montana? A. Yes.

Q. How long before that time?

A. Possibly 6 or 7 months.

Q. And was that previous mail received?

A. Yes.

Q. How do you know it was received?

A. Because he replied and I was in touch with him up [15] to that time.

Q. Did you ever have a conversation with either of the defendants regarding this statement about which you have been testifying?

A. Yes; he was in my office.

Q. What date now, please?

A. I believe in August of 1953.

Q. Who was present?

A. Myself, Mr. Nelson and Mr. Yale B. Griffis and Mrs. Stokes.

Q. What was said if anything by Mr. Stokes at that time regarding the statements?

(Testimony of James H. Reeves.)

A. Well, he just said he couldn't pay it.

Q. Except for this conversation in August, 1953, did you otherwise hear from either of the defendants in response to this statement up to the time of the filing of this lawsuit? A. No.

Q. Did either of the defendants ever communicate to you or make any statement to you that the statement of account was inaccurate up to the time of filing this lawsuit? A. No.

Q. Did the defendants or either of them ever return the statement by you sent to them in July?

A. No, sir.

Q. Never returned them? [16] A. No, sir.

Q. Did you send the defendants any further copies of the statement after July, 1953?

A. I believe there was one with the complaint.

Q. Other than that you sent them no other statements? A. No.

Mr. Dugan: At this time pursuant to the notice to produce on file in the cause and served on the defendants' attorneys we call upon the defendants to produce the original copy of the invoice or statement dated April 3, 1953, and sent to the defendants in July, 1953.

Mr. Wood: We have no such statement.

Q. I hand you a document marked Plaintiffs' Exhibit No. 1 and ask you to state what it is?

A. This is a statement from Reeves & Nelson, Certified Public Accountants, Empire State Bank Building, Dallas, Texas.

Q. Don't read the contents. I am going to ask

(Testimony of James H. Reeves.)

you whether or not this is a copy of the statement about which you have previously testified as having been sent out in July, 1953? A. Yes.

Q. Is it a true and exact carbon copy of that statement? A. Yes.

Q. And the date it bears of April 3, 1953, is not the date on which it was sent out? [17]

A. No, sir; the statement was mailed in July.

Q. The date appearing at the top of the instrument referred to date of completion of the account or service?

A. April 3, 1953, pertains to the date we completed the work and also to the statement on which we presented the original bill.

Mr. Dugan: Subject to objection by counsel for the defendants we offer in evidence Plaintiffs' Exhibit 1.

PLAINTIFFS' EXHIBIT No. 1

Case No. 1570, James H. Reeves, et al., vs. A. E. Stokes, et al.

Reeves & Nelson
Certified Public Accountants
Empire State Bank Building
Dallas, Texas

Date: April 3, 1953.

Invoice No. 2066.

(Testimony of James H. Reeves.)

Mr. and Mrs. A. E. Stokes,
P.O. Box 276,
Sidney, Montana.

Professional Services rendered as follows:

Analysis and examination of books and records of account, and miscellaneous data required for filing U. S. tax returns as follows:

1. 1946 U. S. Individual Income Tax Return for A. E. Stokes;
2. 1946 U. S. Individual Income Tax Return for Evelyn F. Stokes;
3. 1947 U. S. Individual Income Tax Return for A. E. Stokes;
4. 1947 U. S. Individual Income Tax Return for Evelyn F. Stokes;
5. 1948 U. S. Individual Income Tax Return for A. E. Stokes;
6. 1948 U. S. Individual Income Tax Return for Evelyn F. Stokes;
7. 1949 U. S. Individual Income Tax Return for A. E. Stokes;
8. 1950 U. S. Individual Income Tax Return for A. E. Stokes;
9. 1951 U. S. Individual Income Tax Return for A. E. Stokes;
10. 1951 U. S. Individual Income Tax Return for Estelle Stokes;
11. 1952 U. S. Individual Income Tax Return for A. E. Stokes, together with extension granted to June 15, 1953;

(Testimony of James H. Reeves.)

12. 1952 U. S. Individual Income Tax Return for Estelle Stokes, together with extension granted to June 15, 1953;

13. 1946 U. S. Partnership Return of Income for the period, May 14 to December 31, 1946, for Allied Lumber Company;

14. 1947 U. S. Partnership Return of Income for Allied Lumber Company;

15. Final Return—1948 U. S. Return of Income for the period, January 1 to September 8, 1948, for Allied Lumber Company;

16. Final Return—1948 U. S. Partnership Return of Income for the period, November 1, 1948, to July 31, 1949, for Air Base City;

Conferences in connection with the above.

James H. Reeves, C.P.A.

28 days at \$35.00 per diem. \$ 980.00

Isham P. Nelson, Jr., C.P.A.

42½ days at \$35.00 per diem. 1,417.50

B. B. Wright, C.P.A.

16 days at \$30.00 per diem. 480.00

\$2,877.50

Add:

Telephone Calls. 400.00

Travel Expense

Dallas to Gainesville and return. 10.72

\$3,288.22

(Testimony of James H. Reeves.)

Less:

Payment received..... 250.00

Balance Due..... \$3,038.22

Received in evidence December 5, 1955.

Mr. Wood: I would like to glance at it. Insofar as Estelle Stokes is concerned it is objected to as irrelevant and incompetent for any purpose whatsoever.

The Court: Well, we won't stop to look at it now; I will receive it subject to the objection. You understand it is received subject to his objection?

Mr. Dugan: Subject to his objection.

Q. (By Mr. Dugan): What is the amount shown as the balance due in Plaintiffs' Exhibit No. 1? A. \$3,038.22.

Q. Have the defendants or either of them paid this or any part of the \$3,038.22 shown in Plaintiffs' Exhibit No. 1? A. No, sir.

Q. Have you computed the interest on \$3,038.22 from July, 1953, to this date at 6% per annum?

A. Yes, sir. [18]

Q. And how much is that interest?

A. That would be \$486.08.

Mr. Dugan: At this time, your Honor, we wish to ask the court to take judicial notice of the laws of the State of Texas, particularly section or article 2226 of the civil statutes of the State of Texas, and

(Testimony of James H. Reeves.)

at this time I hand to the court Volume 7 of Vernon Civil Statutes, State of Texas, Annotated, containing that section.

The Court: Show it to counsel.

Mr. Dugan: I also wish to call to the court's attention that that numbered section has been amended by the Acts of 1953 as shown in the annotation in the pocket parts; however, that the effective date of the amendment is 90 days after May 27, 1953, date of adjournment, or which would be after the date of the presentation of the statement.

The Court: The statute is amended as shown in the supplement attached to the volume?

Mr. Dugan: Yes, sir; it is a pocket part.

Mr. Wood: To which each of the defendants objects as wholly incompetent and irrelevant for any purpose; the question of competency is not directed at the character of the proof but it is incompetent in this lawsuit or irrelevant for any purpose.

The Court: What is the purpose of introducing this statute of Texas? [19]

Mr. Dugan: Your Honor, the place at which this cause of action arose and was to be paid was in the State of Texas, at Dallas, Texas. According to the references contained in the trial brief presented your Honor previously the locale determines the question of attorney's fees as a part of the substantive law of the claim. I could put that this way, that the right to recover attorney's fees under this statute is part of the substantive law of the State of Texas and goes along with the cause of action and

(Testimony of James H. Reeves.)

accordingly under this court taking judicial notice and recognizing the laws of the State of Texas——

The Court: Suppose you read that part of the statute that is applicable here according to your statement into the record so that it may go into the record and then the court will receive it subject to objection of counsel.

Mr. Wood: There is no use keeping the book, isn't that it, so they may have the book back?

The Court: Yes.

Mr. Wood: I am willing to have it read into the record.

The Court: Just that portion applicable here.

Mr. Dugan: Very well, I will just read that part. "Article 2226. Attorney's fees. Any person having a valid claim against a person or corporation for personal services rendered, labor done, materials furnished, overcharges, or [20] freight or express lost, or damaged freight or express, or stock killed or injured, and they present the same to such person or corporation or to any duly authorized agent thereof; and, if at the expiration of 30 days thereafter the claim has not been paid or satisfied and he should finally obtain judgment for any amount thereof as presented to such person or corporation, he may also recover in addition to his claim and costs a reasonable amount as attorney's fees, if represented by an attorney."

The Court: You better note the statute that you have been reading and also have the volume and title and whatever identifies that particular statute.

(Testimony of James H. Reeves.)

Mr. Dugan: Obtained on page 219, Volume 7 of Vernon's Civil Statutes of the State of Texas, Annotated, published and compiled in 1950.

The Court: You spoke of an amendment. Does that change the wording of what you just indicated?

Mr. Dugan: The amendment as I read it over carefully didn't seem to change it materially, your Honor; however, it does appear the amendment would not take effect until after the date of rendition of this statement.

The Court: Very well.

Mr. Dugan: And that, however, was contained in this volume in a pocket part, included and further referred to as 1954 Cumulative Annual Pocket Part for use during 1954 or 1955. [21]

Mr. Wood: Instead of arguing matters now and delaying trial of the case I presume we will have an opportunity to present a brief and present this particular law question. I want the court to understand I don't think the statute has any application whatever.

The Court: You will have an opportunity later on.

Mr. Dugan: I am through with this witness.

Cross-Examination

By Mr. Wood:

Q. Mr. Reeves, you have made it very plain I think, have you not, that you do not know Mrs. Stokes and have never had any contact with her at all, am I correct? A. That is exactly right.

(Testimony of James H. Reeves.)

Q. And the first time you have seen her is today in court?

A. I think I saw her earlier today at the hotel but this is the first time.

Q. All of that is prior to the bringing of this lawsuit, '52 and '53 you didn't know her or didn't see her?

A. That is right.

Q. Now, you said you knew Mr. Stokes for a number of years in '46 and thereafter?

A. Yes, sir. [22]

Q. Mr. Stokes was very ill at the time during much of that period?

Mr. Dugan: I object to that as irrelevant and immaterial.

The Court: Well, I don't know; let him answer the question.

Q. (By Mr. Wood): He was, was he not?

A. I don't know that he was; I was told that he was.

Q. You did not know yourself?

A. I don't know of my own knowledge. I was told.

Q. I was wondering if you yourself knew anything about his condition during that period?

A. No, sir.

Q. Now, as I understood you your contacts were then merely sort of friendly and casual during the period '46 or until '52 or thereabouts?

A. They were more than friendly; we were talking business.

(Testimony of James H. Reeves.)

Q. But you didn't transact any business, did you, for him?

A. No; I didn't actually do anything for Mr. Stokes that I intended to charge him a fee for until I got his audit work in my office.

Q. And that was I think you said in '52 in the spring, or April?

A. April 16, 1952, I believe. [23]

Q. What did he do at that time, turn over some books to you?

A. They weren't exactly books. They were more or less original records, that is to say, checks and cancelled checks, check stub pad slips, duplicate slips and so forth, as well as I believe two sets of very, very incomplete records.

Q. You mean book records? A. Yes.

Q. And then you kept those until I suppose '53, was it?

A. That is right, I had those in my file box.

Q. Over in your office?

A. Yes; they were there, that is right.

Q. You did until '53 and it was about that time you completed the work; is that correct?

A. I completed the work April 3, 1953. Mr. Stokes got those records from my office some time in July or August, 1953.

Q. Of 1953? A. Yes, sir.

Q. And during that period from April, 1952, to April, 1953, did you have any contacts with Mr. Stokes with respect to this work that you were doing?

(Testimony of James H. Reeves.)

A. That is from April, 1952, to April, 1953; yes, sir.

Q. You did? A. Yes, sir.

Q. Do you remember in particular having had any contacts [24] with him in September, 1952?

A. Yes.

Q. Isn't it a fact that he was then living in Oklahoma City, Oklahoma?

A. Sir, I made a trip to Oklahoma City to see Mr. Stokes and did see him in Oklahoma City and whether he was living there I couldn't say.

Q. He was not living in Texas then, was he?

A. I couldn't say, sir.

Q. Beg your pardon? A. I couldn't say.

Q. Let me ask you this. Did you on or about the 9th day of September, 1952, have any contact with Mr. Stokes in your office? A. Yes.

Q. And did you discuss the matter of the work that you were doing, discuss it with him?

A. Yes, sir.

Q. And as a matter of fact you discussed the making of all of the various reports that are listed in this schedule attached to this complaint; am I correct? A. Yes, sir.

Q. Did you discuss the matter of your charges with him at that time?

Mr. Dugan: Your Honor, to which we object; the theory [25] of the plaintiffs' cause is that this statement of an account stated on July, 1953, constituted in law a new and separate contract, according to the theory of an account stated, and that any previous

(Testimony of James H. Reeves.)

negotiation or agreements would have been merged and consolidated in the account stated if there was such an account stated; accordingly, that this matter is irrelevant and not responsive to the issues of the case.

The Court: I will let him go into that because there is a question whether or not we will have to settle later on whether it is an account stated, and therefore, he may question the witness subject to your objection.

Mr. Wood: On top of that if I might say a few things for the record so the court will understand our position, it is expressly stated so far as Mrs. Stokes is concerned, she had no contract with the man or didn't even know the man; that as far as Mr. Stokes is concerned the position is taken that there was a contract made for a definite sum and no other contract exists between the parties.

The Court: For a definite sum?

Mr. Wood: A definite sum which is not the sum demanded in the complaint.

Q. (By Mr. Wood): Now, I am asking you then, Mr. Reeves, whether you had any conversation or talk on this thing what you wanted [26] with Mr. Stokes the early part of September, 1952, with reference to your charges? A. Yes, sir; I was.

Q. Just simply say, yes you did or did not.

A. I did.

Q. But you haven't detailed that in your testimony just so far?

A. Sir, I am not a lawyer and I will try to

(Testimony of James H. Reeves.)

answer your questions the best I possibly can if you will allow me to. The discussion I had with Mr. Stokes all the time was trying to get him to pay for my work.

Q. Was that the nature of your talk in September, 1952? A. It certainly was.

Q. Was that the only thing said?

A. Plus the fact he paid me \$250 on account.

Q. He paid you that on account?

A. Yes; he did.

Q. Isn't it the fact the check given you was the check of Mrs. Stokes?

A. He had in his possession a check signed by Mrs. Estelle L. Stokes; he made the check out for \$200.

Q. \$200?

A. \$250. I considered it part payment on account, although it wasn't the money he had been promising to pay me. [27]

Q. We will not go into that now. The extent of your conversation then was with reference to the fact of the obligation according to your version of it, is that correct, that was the character of your talk with him at that time?

A. Sir, that conversation had nothing to do with anything in the world except he paid me but \$250 on account.

Q. Nothing else was mentioned?

A. Not to my knowledge except I was complaining pretty good about not getting paid.

Q. You would not then be willing to say or you

(Testimony of James H. Reeves.)

didn't say at that time an arrangement was made with respect to your charges?

A. I will say there definitely was not, sir.

Q. There was not, all right, that is all I wanted to know. Now then, as a matter of fact in 1953—well, before going into that and so that there won't be any question about it in the matter of the check.

The Witness: Sir, may I please say one word to my attorney?

The Court: Let your counsel direct your conversation and put anything you want to testify to, you better speak to him about it; he can talk to you on redirect examination.

Q. (By Mr. Wood): Just handing you, Mr. Reeves, a document that has been marked for the purpose of this lawsuit as Defendants' [28] Exhibit No. 2, and I will ask you to state if you have seen that check before; just say yes or no.

A. Yes, sir.

Q. And is this endorsement upon the check of Reeves and Nelson your endorsement?

A. Yes, sir.

Q. And the document, Defendants' Exhibit No. 2 is a check; is it not? A. That is right, sir.

Mr. Wood: I am not putting it in evidence yet.

Q. (By Mr. Wood): Now, Mr. Reeves, you have said that you sent a statement to Mr. and Mrs. Stokes, as I understood you, of your claimed account in the summer of 1953; is that correct?

A. Yes, sir.

(Testimony of James H. Reeves.)

Q. And how did you send it; just ordinary mail?

A. Yes, sir.

Q. And did you get an acknowledgment of it?

A. No, sir.

Q. Now, following that particular action upon your part, isn't it a fact that you brought a lawsuit in Texas? A. Pardon me?

Q. After this particular transaction of mailing in the summer of 1953 did you not bring a lawsuit in Texas against the two defendants here? [29]

Mr. Dugan: Your Honor, we object to the matter of some other lawsuit as being irrelevant, incompetent and immaterial and not the best evidence, this witness not being competent.

The Court: Well, we will let it go in subject to the objection; it may have some bearing on the case that I don't anticipate now; you may question him in regard to the matter.

Q. (By Mr. Wood): I am handing you herewith a document marked for identification Defendants' Exhibit No. 3, Mr. Reeves, and I will ask you to look over these papers and then I will ask you another question.

A. All right, sir; I have seen it before.

Q. You have seen these papers before?

A. Yes; not those but some others like them.

Q. But as a matter of fact these papers show according to their face that you and Mr. Nelson as Reeves and Nelson brought a suit——

Mr. Dugan: Now, we object to counsel testifying from the documents not in evidence.

(Testimony of James H. Reeves.)

Mr. Wood: I picked up the wrong document; I am sorry. I thought I had the right one but I am sorry. So we will just ask you to mark it again, the same one.

Mr. Dugan: Now, may the record show that counsel for the defendants has substituted another paper and stricken [30] some paper about which he was interrogating the witness, a document now marked Defendants' Exhibit No. 3.

Q. (By Mr. Wood): I now hand you herewith a document marked Defendants' Exhibit 3, Mr. Reeves and I will ask you whether or not you know anything about the matters referred to there in that document?

Mr. Dugan: May we have a continuing objection on the same grounds?

The Court: Yes. You object to the whole proceeding?

Mr. Dugan: Yes, sir; this is a copy of the proceedings.

Mr. Dugan: Restrict yourself to the questions which are put to you.

Q. (By Mr. Wood): You are familiar with the proceedings referred to in this endorsement?

A. Yes.

Q. Isn't it a fact that they represent proceedings brought by Reeves and Nelson in Texas in the federal court and upon this same account that is made the subject of this suit?

A. Yes, sir.

Q. What happened to that lawsuit down there?

A. We lost it [31]

(Testimony of James H. Reeves.)

Q. It was dismissed, wasn't it?

A. Well, sir, I am not an attorney but I believe it was a question of jurisdiction.

Q. Well, it was dismissed, was it not?

A. It was transferred as I understood it but not dismissed.

Q. Is it still pending down there?

A. It was transferred up here.

Q. That is your idea?

A. Well, it is probably a pretty good one.

Mr. Wood: We now offer in evidence Defendants' Exhibit 3.

Mr. Dugan: To which we object.

The Court: Received subject to objection.

DEFENDANTS' EXHIBIT No. 3

Summons in a Civil Action

Case No. 1570

United States District Court for the Northern
District of Texas, Dallas Division

Civil Action File No. 5255

JAMES H. REEVES and ISHAM P. NELSON,
JR., dba Reeves & Nelson,

Plaintiffs,

vs.

A. E. STOKES, and Wife, ESTELLE STOKES,
Defendants.

To the above-named Defendants:

(Testimony of James H. Reeves.)

Defendants' Exhibit No. 3—(Continued)

You are hereby summoned and required to serve upon Yale B. Griffis, plaintiffs' attorney, whose address is 207 Empire State Bank Building, Dallas, Texas, an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] GEORGE W. PARKER,
Clerk of Court;

/s/ LILLIAN HAMILTON,
Deputy Clerk.

Date: Aug. 14, 1953.

Note—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(Testimony of James H. Reeves.)

Defendants' Exhibit No. 3—(Continued)

In the District Court of the United States for the
Northern District of Texas, Dallas Division

Civil Action No. 5255

JAMES H. REEVES and ISHAM P. NELSON,
JR., dba Reeves & Nelson,

vs.

A. E. STOKES, and Wife, ESTELLE STOKES

COMPLAINT ON ACCOUNT

Comes now James H. Reeves and Isham P. Nelson, Jr., dba Reeves & Nelson, Certified Public Accountants, plaintiffs, complaining of A. E. Stokes, and wife, Estelle Stokes, defendants, and for cause of action respectfully show as follows:

I.

That jurisdiction of this cause of action is founded on diversity of citizenship and amount in controversy. That plaintiffs are citizens of Dallas, Dallas County, Texas, and defendants are citizens of Sidney, Montana. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars and no/100 (\$3,000.00).

II.

Defendants owe plaintiffs for professional services rendered to the defendants as Certified Public

(Testimony of James H. Reeves.)

Defendants' Exhibit No. 3—(Continued)

Accountants, Three Thousand Thirty-eight Dollars and Twenty-two cents (\$3,038.22) according to the account hereto annexed as Exhibit "A."

Wherefore, plaintiffs demand judgment against defendants, jointly and severally, for the sum of Three Thousand Thirty-eight Dollars and Twenty-two cents (\$3,038.22) and costs.

/s/ YALE B. GRIFFIS,
Attorney for Plaintiffs.

[Exhibit A attached to this complaint is identical to Plaintiffs' Exhibit No. 1.]

In the District Court of the United States for the
Northern District of Texas, Dallas Division

Civil Action No. 5255

JAMES H. REEVES and ISHAM P. NELSON,
JR., dba Reeves & Nelson,

vs.

A. E. STOKES, and Wife, ESTELLE STOKES

Comes now the plaintiffs by Yale B. Griffis, their attorney, and make application to this Honorable Court for Order of Service of Process outside the

(Testimony of James H. Reeves.)

Defendants' Exhibit No. 3—(Continued)

territorial limits from the State of Texas, and for an Order setting the date for defendants to answer plaintiffs' complaint, and aver in support thereof:

I.

Plaintiffs are residents of Dallas, Texas, and the amount of complaint exceeds Three Thousand Dollars (\$3,000.00).

II.

Defendants, A. E. Stokes, and wife, Estelle Stokes, are residents of Sidney, Montana, P.O. Box 272, telephone number 890, with last known address being the Lalonde Hotel.

Wherefore, it is prayed that this Honorable Court issue its Order directing that process in the above-styled matter be made by the U. S. Marshal at Sidney, Montana, or by the Sheriff or Deputy Sheriff at Sidney, Montana, and set a time within which defendants, and each of them, may answer plaintiffs' complaint herein.

Respectfully submitted,

/s/ YALE B. GRIFFIS,

Attorney for Plaintiffs.

(Testimony of James H. Reeves.)

Defendants' Exhibit No. 3—(Continued)

In the District Court of the United States for the
Northern District of Texas, Dallas Division

Civil Action No. 5255

JAMES H. REEVES and ISHAM P. NELSON,
JR., dba Reeves & Nelson,

vs.

A. E. STOKES, and Wife, ESTELLE STOKES

On the petition on file herein and the application of plaintiffs for an Order for Service of Process on defendants outside of territorial jurisdiction of the State of Texas, and for setting a time within which defendants may answer plaintiffs' complaint, it is Ordered:

I.

That service shall be made upon defendants and each of them by the U. S. Marshal, at Sidney, Montana, or by the Sheriff or Deputy Sheriff, at Sidney, Montana, by delivering to them for service copies of the summons and complaint herein, together with copies of plaintiffs' application and this order.

II.

That defendants and each of them shall have 30 days within which to answer plaintiffs' complaint or otherwise plea.

(Testimony of James H. Reeves.)

Defendants' Exhibit No. 3—(Continued)

WM. H. ATWELL,
U. S. District Judge.

Dated at Dallas, Texas, this 14th day of August,
1953.

Received in evidence December 5, 1955.

Mr. Dugan: Your Honor, my previous objection goes to this document and the receipt of it?

The Court: Certainly.

Mr. Dugan: I haven't had an opportunity to examine it before you made your ruling.

The Court: Take your time.

Mr. Dugan: Very well, I examined it, your Honor.

Mr. Wood: Just a few more questions, Mr. Reeves.

Q. Did I understand you to say that you went to the home of Mr. Stokes in April, 1952, and made a deal, was that right? [32] A. Yes, sir.

Q. And what was the character of the deal that you say was made then?

A. The deal that was made, sir, was that he asked me how much money I would charge him for the work and I told him that I could not foresee to the dollar how much money it would cost him but that records ordinarily in pretty good shape would cost around \$300 a year and he had 7 years for re-

(Testimony of James H. Reeves.)

turns that had not been filed, as well as the current year was also concerned, and I estimated around \$300 per year for the work.

Q. Now, that is the deal you say was made at that time? A. That is right.

Q. You still say there was no deal made September 9, 1952? A. Positively not, sir.

Q. Referring you to Defendants' Exhibit No. 3 and after that Texas suit was brought and the papers were served, Mr. Stokes came down to see you? A. Yes.

Q. As a matter of fact he was then living in Sidney, Montana?

A. I believe that is right, sir; I am not sure.

Q. And he came down and saw you at Dallas?

A. Yes, sir. [33]

Q. And didn't you at that time discuss with him and he discuss with you the matter of your account for services?

A. Yes, sir. What he said was——

Q. I am asking you if he did or did not?

A. Yes; we did.

Q. And did he have anything whatever to say about the account being excessive or exorbitant or not in accordance with the arrangement?

A. No, sir.

Q. Said nothing at all? A. No, sir.

Q. And later when this suit was disposed of in Texas and along in either November or December of 1953 did you have any telephone talk with Mr. Stokes regarding your account and the obligation involved, if any?

(Testimony of James H. Reeves.)

Mr. Dugan: I object to that as indefinite as to time.

Q. I said either November or December, 1953?

Mr. Dugan: I object to that as including a period after the filing of the lawsuit.

Mr. Wood: No, it was not; this lawsuit was filed in the end of December, 1953.

The Court: I will permit him to answer the question.

A. Well, I don't believe I can, actually I don't know.

Q. You don't remember? [34]

A. I don't recall.

Q. Didn't you call him yourself in Sidney to talk to him about this matter?

A. It is entirely possible, I may have.

Q. But you can't remember it now?

A. I couldn't pinpoint it that close.

Q. Didn't make any impression upon you, is that what you are telling me?

A. As to that, sir, my memory is just not complete.

Mr. Wood: All right, that is all I wanted to know about it. That is all.

(Testimony of James H. Reeves.)

Redirect Examination

By Mr. Dugan:

Q. In your examination just now, Mr. Reeves, you have been asked whether you had had any contact whatsoever with Mrs. Stokes and you said that you had never seen her before, just talked to her on the telephone? A. Yes, sir.

Q. On several occasions?

A. No; just on one occasion.

Q. When was that?

A. That was in, I believe it was March of 1955.

Q. Prior to that time; that was after the suit was filed? [35] A. Yes.

Q. Have you talked with her any time prior to, had you talked to her at any time prior to filing suit, in for example, calling for Mr. Stokes, did you speak to her on the telephone?

A. She may have answered the telephone but I never talked to her; he transacted the business.

Q. He transacted the business?

A. Yes, sir.

Q. Now, this check which I haven't seen yet but which was furnished—may I see it?

Mr. Wood: Yes; it hasn't been put in evidence yet.

Q. (By Mr. Dugan:) The check which is marked Defendants' Exhibit 2, not yet offered in evidence, was actually presented to you by Mr. Stokes?

A. Yes.

(Testimony of James H. Reeves.)

Q. But bore her signature on the account in question it was drawn against? A. Yes, sir.

Q. And purported to be payment on the account in question?

Mr. Wood: What purported to be?

Q. The check in payment purported to be payment was presented to you as purported payment of the account due you? [36]

A. It certainly was.

Mr. Wood: I thought you were going to say the check itself purported to.

Mr. Dugan: No.

Q. Included among the records you prepared in the form of income tax returns were returns for Mrs. Estelle Stokes, were there? A. Yes.

Q. Those were individual returns or joint returns?

A. They were community returns prepared for Mr. and Mrs. Stokes for the calendar years 1951 and 1952.

Q. Did they include income of Mrs. Stokes?

A. Yes.

Q. Included in the records, for example, were there records of the transactions performed or accomplished by Mrs. Stokes? A. Yes.

Q. Now you mentioned in a conversation with Mr. Stokes that you had given him an estimate of what your services might run, would you indicate to this court what basis you made that estimate on?

A. Yes, I believe I did that by a study for

(Testimony of James H. Reeves.)

small businesses. It would cost about \$300 a year if they were in good shape.

Q. Were these records of the type you used to serve as [37] a basis for your estimate?

A. No, they certainly weren't.

Q. Of far greater difficulty, were they?

Mr. Wood: We object to these questions as leading and suggestive.

Mr. Dugan: They are leading. I admit.

The Court: They are leading all right and suggestive.

Mr. Wood: I will stand for a certain amount of it but I am not going to stand for any more.

Q. (By Mr. Dugan): Mr. Reeves, did the difficulty of the work which you actually did, and the difficulty of the work which you were estimating, how would you say those two compared?

Q. Well, there would be no comparison because actually everything for the 7 years' work was just pitched together in 5 or 6 boxes and no particular sequence to find material and so forth.

Q. And which would you say that was of great difficulty than that you were talking about in an estimate? A. It certainly was.

Mr. Wood: That is objected to as improper re-direct examination.

The Court: Yes, I think so; we will have to sustain the objection there. [38]

Q. (By Mr. Dugan): There has been introduced in evidence here Defendant's Exhibit 3 purporting to be certified copies of a suit filed by your

(Testimony of James H. Reeves.)

firm against the defendants in the State of Texas. Are the papers constituting Defendant's Exhibit No. 3 complete with respect to the, all of the papers in the action or are there other papers which are missing particularly the answer or appearance of the defendants and the orders made in connection with the matter?

Mr. Wood: Objected to as immaterial and not proper redirect examination.

The Court: Well I think he may ask him in regard to them, whether all the papers are there; if the exhibit is material at all why then that question would be material.

A. To the best of my knowledge the papers are here.

Q. You are not a lawyer, are you?

A. No, sir; I am not.

Q. In thumbing through here do you see any order made by the court with respect to disposition of the case? A. No.

Mr. Wood: That is objected to because the document speaks for itself.

The Court: Yes.

Q. (By Mr. Dugan): Do you know whether any order was entered in the case? [39]

Mr. Wood: That is objected to as immaterial and not proper redirect.

The Court: You brought that out on your cross-examination; you may inquire as to that.

Q. Was there such an order entered in the case?

The Court: If you know.

(Testimony of James H. Reeves.)

A. Yes, that is, to say, I was told by my attorney the case was dismissed, Mr. Dugan, would be the best knowledge I have.

Mr. Wood: That is purely hearsay.

The Court: What did you say further?

A. I said my attorney in Dallas, Texas, told me the case had been dismissed.

Q. (By Mr. Dugan): Was it dismissed on your attorney's motion do you know? A. No, sir.

The Court: Well all right, let it stand.

Mr. Wood: Yes, I don't care.

Q. (By Mr. Dugan): Do you know whether an answer was filed in that case? Now, by an answer we mean an appearance in which the specific allegations of the complaint are answered and denied or admitted or other allegations such as was done here and I read from in the opening [40] statement? A. Yes, sir; I saw the answer.

Q. Was it an answer or appearance to take the case out of the jurisdiction of the court?

Mr. Wood: This is all objected to as not only irrelevant but immaterial.

The Court: You are talking about some documents that may or may not have been filed in the case; I will sustain the objection; if they are material at all, they should be here with the rest of the documents.

Mr. Dugan: Very well.

Q. (By Mr. Dugan): I believe you said in your

(Testimony of James H. Reeves.)

direct examination that you presented a statement of account to the defendants in April of 1953?

A. That is right, sir.

Q. And that was immediately upon completion of the work? A. Yes, sir.

Q. And you presented it personally to Mr. Stokes?

A. I handed it to Mr. Stokes in my office.

Q. Did you retain a copy of that statement?

A. Yes, sir.

Q. An exact carbon copy is yet in your possession? A. Yes, sir.

Mr. Dugan: I will call upon the defendants to produce the statement dated April 3, 1953, bearing the same [41] invoice number as the original invoice personally presented to the defendant.

Mr. Wood: We have nothing of the sort.

Q. I hand you as marked Plaintiff's Exhibit No. 4 and ask you to state what that is?

A. This is a copy of the Reeves-Nelson invoice 2066, dated April 3, 1953, to Mr. A. E. Stokes, P. O. Box 276, Sidney, Montana, in the amount of—

Q. Just a minute, is this instrument—is it a carbon copy of the statement? A. Yes, sir.

Q. And it is an exact copy? A. Yes, sir.

Q. Before we introduce it tell me how it differs from the statement which you have offered in evidence as Plaintiff's Exhibit No. 1.

A. This statement does not include the telephone charges which I should have rendered Mr. and Mrs. Stokes at the time.

(Testimony of James H. Reeves.)

Q. Was any objection made at any time, ever made by Mr. Stokes in writing or otherwise to this document? A. No, sir.

Q. Or to the amount of this document?

A. No, sir.

Mr. Dugan: Subject to objection by defendants' attorneys we offer in evidence Plaintiff's Exhibit 4 by way [42] of background as the duplicate to the other statement.

Mr. Wood: It is objected to as immaterial for any purpose and is not proper redirect examination in any event.

The Court: I will admit it from your examination; I heard the answers and it will be admitted in evidence.

Plaintiff's Exhibit No. 4

Civil Case No. 1570, James H. Reeves, et al., vs.
A. E. Stokes, et al.

April 3, 1953.

2066

Mr. A. E. Stokes,
P. O. Box 276,
Sidney, Montana.

Per Detail Attached: \$2,627.50

Mr. A. E. Stokes

Analysis and examination of books and records of account, and miscellaneous data required for

filing U. S. tax returns for Mr. and Mrs. A. E. Stokes for the years 1946, 1947, 1948, 1949, 1950, 1951 and 1952; for Allied Lumber Company for the years 1946, 1947 and 1948, and for Air Base City for the year 1949.

Conferences in connection with the above.

James H. Reeves, C.P.A., 28 days at \$35.00 per diem	\$ 980.00
Isham P. Nelson, Jr., C.P.A., 42½ days at \$35.00 per diem	1,417.50
B. B. Wright, C.P.A., 16 days at \$30.00 per diem	480.00
	<hr/>
	\$2,877.50
Less Payment	250.00
	<hr/>
Total.....	<u><u>\$2,627.50</u></u>

Received in evidence December 5, 1955.

The Court: Leave the exhibit with the clerk.

Mr. Dugan: Yes, your Honor.

The Court: That is all.

Recross-Examination

By Mr. Wood:

Q. I merely want to refer back to the exhibit attached to the complaint in this action, Mr. Reeves, and by that I mean what is referred to as Exhibit A attached to the complaint in this action here.

The Court: What is the exhibit you have in your hand?

Mr. Wood: This is Exhibit A attached to the complaint in this action in this court.

The Court: Yes.

Q. (By Mr. Wood): And there is listed there, is there not, item 10, U. S. Individual Income Tax Return for Estelle Stokes, and item 12, 1952 U. S. Individual Income Tax Return for Estelle Stokes, together with extension granted to June 15, [43] 1953. Now as to the extent only of those items that anything was done for Mrs. Stokes, am I correct about that?

A. Mrs. Stokes never asked me to do anything for her.

Q. I am asking you if it was to that extent only anything was done for Mrs. Stokes by your office?

A. Yes, that is right.

Mr. Wood: That is all I want to know. No further examination.

Mr. Dugan: Plaintiff rests.

The Court. Do you want to make a statement for the record, a brief one?

Mr. Wood: No, your Honor, I see no reason for it.

The Court: You may proceed.

MRS. ESTELLE STOKES

was called as a witness and having been first duly sworn testified as follows:

Direct Examination

By Mr. Wood:

Q. Will you state your name, please?

A. Estelle Stokes.

Q. And you are one of the defendants in this lawsuit? A. That is right. [44]

Q. You are the wife, are you not, of Mr. A. E. Stokes, the other defendant? A. Yes, sir.

Q. You were married when, you and Mr. Stokes? A. August 11, 1951.

Q. I am asking you to refer to a document marked Defendant's Exhibit No. 2, Mrs. Stokes, and I will ask you whether you have seen that document before? A. Yes, sir.

Q. And it is signed, is it not, Estelle Parker, Special Agent?

A. Estelle Parker, Special Agent.

Q. And who was Estelle Parker?

A. I was Estelle Parker previous to my marriage to Mr. Stokes.

Q. And this document Defendant's Exhibit 2 is dated February 9, 1952, is it not?

Mr. Dugan: I object to the detailing of all of

(Testimony of Estelle Stokes.)

the evidence set forth in the document without including it in evidence.

Q. I am going to introduce it in evidence. I am asking her if it isn't dated that way?

A. Yes, sir.

Q. And as a matter of fact what was the condition of the defendant's exhibit as and when you turned that document [45] over to anybody else insofar as to whom it is payable is concerned and the amount?

A. To my husband, Mr. Stokes.

Q. It was turned over to him?

A. It was a blank check signed by me.

Q. Signed by you? A. Yes.

Q. And you were still carrying on although you were married to Mr. Stokes you were still carrying on your bank account as Estelle Parker?

A. I still had my bank account as Estelle Parker.

Q. Now was this document delivered by you to anybody when it was signed by you as Estelle Parker, special account, was it delivered by you to anybody?

A. To my husband.

Q. And when was it delivered to him?

A. September 9th, 8 or 9th, 9th.

Q. Of what year? A. '52.

Q. And what was the purpose in delivering that blank check except for your name to him?

A. Well, he was going down to Dallas from Oklahoma City, our home.

Q. You were living then in Oklahoma City?

(Testimony of Estelle Stokes.)

A. That is right. [46]

Q. And to make arrangements with Mr. Reeves on the returns he was making? A. Yes.

Q. And the Mr. Reeves you refer to is the gentleman who testified previously in this lawsuit?

A. That is right.

Q. And what was the purpose in giving the document to Mr. Stokes?

Mr. Dugan: Now we object to this as calling for an opinion, and as being irrelevant and immaterial what the purpose was behind these things; the check speaks for itself and is the best evidence.

The Court: Well I think she may state why she gave it to her husband.

Q. (By Mr. Wood): You may say why you gave it to your husband?

A. To pay my part of the income tax returns that Mr. Reeves was preparing for me for the two years 1951 and 1952.

Q. And what authority if any did you give to Mr. Stokes with respect to filling in the amounts for which the check was to be issued for?

A. I told him to fill in the amount for the two years after he talked with Mr. Reeves and had decided upon a definite charge that was to be made for the returns.

Q. Now whose writing is on the face of this check, [47] Defendant's Exhibit No. 2?

A. Mr. Stokes made the check out himself; I signed it; it was blank.

(Testimony of Estelle Stokes.)

Q. Did he make that out in your presence or elsewhere?

A. No, he didn't make it in my presence; I gave it to him before he left home, a blank check.

Q. Before he left home to go to Dallas to see Mr. Reeves, is that correct? A. That is right.

Q. Now still referring to Defendant's Exhibit 2 did that pass through your bank account ultimately, may I ask?

A. Yes, sir; Liberty National Bank, Oklahoma City.

Mr. Wood: We now offer in evidence Defendant's Exhibit No. 2. You want to see it? I guess you haven't seen it.

Mr. Dugan: I haven't seen it.

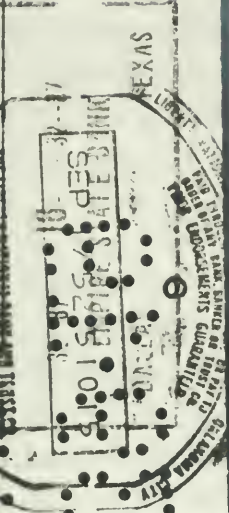
Mr. Dugan: No objection.

The Court: It may be received in evidence.

16 1957

32-61
MERCANTILE
PAY TO THE ORDER OF
BANK OR BANKER
OR CLEARING HOUSE
DALLAS CLEARING HOUSE
PRIOR ENGAGEMENT
GUARANTEED

A. E. Stokes
Receives + Collects



Receives and collects for all

Case 1570

Dynasty H. Parker & Co.

569

No.

ESTELLE PARKER
KIRKIN TOWER HOTEL

39-19
1030

195 2

9-9

OKLAHOMA CITY, OKLA.

\$250.00

Q. E. Stokes

no 100 DOLLARS

Livingston and Feltz

The Liberty National Bank & Trust Co.

Oklahoma City, Oklahoma

Estelle Parker
Deer Acct

Livingston acct

Received in evidence December 5, 1955.

(Testimony of Estelle Stokes.)

Q. (By Mr. Wood): Now will you state, Mrs. Stokes, or perhaps you have already done so, whether you knew Mr. Reeves at all?

A. No, I did not.

Q. As a matter of fact have you ever had any contact with Mr. Reeves or Mr. Nelson, any personal contact?

A. No, sir; I have not. [48]

Q. What if any arrangement did you ever make directly or indirectly with respect to the account sued upon in this lawsuit?

A. Nothing personally with them.

Q. Then if I may repeat what you have said by way of answer the only contact you have had with Mr. Reeves was indirectly and this check Defendant's Exhibit No. 2, is that right?

A. That is right, sir.

Q. And you have had no contact with him or his firm either previously or since?

A. No, sir.

Q. And the items for which the check was given to Mr. Stokes are covered, are they not, by the exhibit attached to the complaint in this lawsuit in the items numbered 10 and 12?

Mr. Dugan: I object to this likewise in counsel's words as both leading and suggestive and argumentative and repetitious.

The Court: Yes, but he can inquire whether having seen that account attached to the complaint she knew at the time what the charges were against her and if that check was intended to pay that account.

Q. And to be specific in complying with the sug-

(Testimony of Estelle Stokes.)

gestion and request of the court what items if any on this exhibit A [49] were to be paid by the check that you gave Mr. Stokes?

Mr. Dugan: Your Honor, I object to that as repetitious and calling for a conclusion of the witness with respect to hearsay statement between herself and her husband.

The Court: What accounts, if any, or items on that exhibit, if any, was the check intended to cover? She may answer that.

A. The 1951 and 1952, I believe that is 10 and 12; without my glasses.

Q. (By Mr. Wood): Do you need glasses?

A. 1951 and 1952.

Q. Items 10 and 12 of this Exhibit A attached to the complaint? A. That is right.

Q. Do you know whether there were any telephone contacts between Mr. Reeves and Mr. Stokes with respect to any of the matters in litigation here, were there any telephone conversations that you know took place and what was said and the conversation?

Mr. Dugan: I object to that as being indefinite as to time and without any indication this witness is qualified to speak.

Mr. Wood: I am asking if she does know whether [50] there were any telephone conversations.

The Court: At that time you are referring to?

Mr. Wood: Very well, if you want specific time.

Q. Mrs. Stokes, in the fall of 1953 do you know

(Testimony of Estelle Stokes.)

whether there were any telephone conversations between Mrs. Stokes and Mr. Reeves?

A. Yes, I recall one when we were in Sidney, Montana.

Q. When about?

A. I would say around the first of December, from the first to the tenth. I know it was after the first of December.

Mr. Dugan: May I ask a question on voir dire?

Q. Could it have been as late as the first of January, 1954?

A. No, it was just shortly after December 1st.

Mr. Dugan: Very well.

Q. (By Mr. Wood): Well to be more specific was it before this particular lawsuit was brought here in Billings? A. Yes, it was.

Q. You don't know of course what was said over the telephone between the two parties?

A. No, sir; I do not.

Q. You simply know there was a telephone conversation between them? [51]

A. That is right.

Q. Now as a matter of fact and I will put it this way, what about Mr. Stokes' physical condition during 1955?

Mr. Dugan: I object to that as irrelevant and immaterial.

Mr. Wood: I would like to have the court know there has been a reason for some of the motions made in the past to continue the case.

The Court: Well, yes, there is a record es-

(Testimony of Estelle Stokes.)

tablished here of a delay and which appeared to be an unnecessary delay perhaps from your standpoint and I will let him show.

Q. (By Mr. Wood): I wish you would please tell the court and counsel what occurred if anything to Mr. Stokes in 1955 that affected his physical condition?

A. On March 10th of this year he was in a gas well explosion, he had a decompressed skull fracture that necessitated brain surgery and the part of the skull that was removed could not be replaced and his head now as far as the skull is all tender and open and he is subject to blindness at times and he was in the hospital for some time and is now recuperating.

Q. What, if anything, could he do with respect to his work from April on?

A. Anything that has been done recently I have had to [52] be with him on doctor's orders at all times.

Q. In other words, he has been incapacitated, is that right, until quite recently?

A. That is right.

Q. And now he is commencing to recover, is that right? A. Yes, sir.

Mr. Wood: That is all.

(Testimony of Estelle Stokes.)

Cross-Examination

By Mr. Dugan:

Q. You at no time discussed with the plaintiffs in this case the amount that this statement, that the charge was to be for your part of the statement as you said?

A. Not personally to Mr. Reeves.

Q. You never made any arrangements with them that your part should be limited to any amount?

A. I have not talked with Mr. Reeves regarding it.

Q. To take care of that arrangement you say that you gave your husband a check in blank and authorized him to go to the office of Reeves and Nelson and ascertain the amount and fill it in, is that correct?

A. That is right.

Q. The preparation of the income tax returns partly including those two years involving your income were done with [53] your authority given to Mr. Stokes, were they not?

A. Yes.

Q. In other words, you made no objection to the turning over of this information to Reeves and Nelson to be prepared and filed for you?

A. No, I didn't.

Q. You were personally not concerned with that?

A. Yes.

Q. And you during the period from the time of your marriage in August, 1951, until the time of the actual filing of these returns were living

(Testimony of Estelle Stokes.)

with your husband as husband and wife, were you not? A. That is right.

Q. And were vitally affected by his getting his returns filed, were you not?

Mr. Wood: That is objected to as immaterial.

The Court: Getting whose returns filed?

Q. All of these returns filed, were you not?

Mr. Wood: Objected to as irrelevant.

Q. (By Mr. Dugan): I will ask you whether you were dependent upon your husband during those years for your livelihood?

Mr. Wood: That is objected to as irrelevant and immaterial.

The Court: Yes, I think so; I will sustain the objection [54] on this line of examination.

Q. This Defendant's Exhibit No. 2, are you familiar with how to determine when the check has actually reached your bank by the perforation holes? I wonder if you would hold that up to the light and ascertain when it was actually paid by the bank?

Mr. Wood: Do you need your glasses? You say you don't need them?

A. September 17th, 1952, if I can see correct.

Q. I see, thank you. Did you place the telephone call in December, 1953, to Mr. Reeves or Mr. Nelson? A. Me?

Q. You. A. I did not.

Q. You only know it from what your husband told you to whom he purported to be talking?

A. That is right.

(Testimony of Estelle Stokes.)

Q. It could have been anyone else, could it not?

A. No, I don't think so; he said Mr. Reeves.

Q. Were you on the line? A. No, I was not.

Q. He said Mr. Reeves? A. That is right.

Mr. Dugan: Your Honor, may we have about a five minute recess? [55]

The Court: Yes, we will take a recess for 10 minutes.

(11:30 a.m.)

(Court resumed, pursuant to recess, at 11:50 a.m., at which time all parties and counsel were present.)

The Court: You may proceed.

Mr. Dugan: Mrs. Stokes, would you take the stand again, please.

MRS. ESTELLE STOKES

resumed the stand and testified as follows:

Direct Examination

(Continued)

By Mr. Dugan:

Q. I think you said that this telephone conversation that you had in December, that was from Sidney, Montana? A. That is right.

Q. You were living at Sidney then?

A. Yes.

Q. In December, 1953? A. That is right.

Q. And were you living in Sidney in July, 1953?

(Testimony of Estelle Stokes.)

A. Yes, we were.

Q. Where were you living then—by you I mean both you and your husband?

A. I am not sure whether we were in the La-londe Hotel.

Q. The Acadia?

A. We had moved to the apartment then I believe at that [56] time. I am really not sure of that date.

Q. In Sidney? A. Yes.

Q. During the month of July, 1953, were you at home in your apartment there in Sidney the greater part of the time? A. Yes, sir; I was.

Q. Do you recall receiving through the mail a document of which this would be a copy, Plaintiff's Exhibit No. 1, do you recall seeing that there?

A. No, sir; I do not.

Q. Post Office Box 276, that was your box of your post office in Sidney, was it? A. No.

Q. What was? A. 272.

Q. Did you receive other mail, do you recall receiving other mail from Reeves and Nelson about that time or the months previous?

A. I don't because the mail was not to me and I just don't recall having received any.

Q. If it was from Reeves and Nelson you turned it over to your husband? A. That is right.

Q. In November of 1954 and January of this year you have been living in Wichita, Kansas? [57]

A. That is right.

Q. What is the address at which you have been

(Testimony of Estelle Stokes.)

living? A. 524 North Fountain.

Q. 524 North Fountain and that was in the months of November and December last past?

A. No, we moved to Wichita, Kansas.

Q. In May of 1953 was it or thereabout?

A. We moved to Wichita, Kansas, in November of 1954.

Q. November of 1954? A. I am sorry.

Q. And been residing at that address 524 North Fountain? A. That is right.

Q. You received mail there, did you?

A. Yes, sir.

Q. I hand you an exhibit marked Plaintiff's Exhibit No. 5 and ask you to state what that is?

A. It is a letter to Mr. A. E. Stokes, Wichita, Kansas.

Q. To what address was it directed?

A. The address is marked out.

Q. What was it before it was marked out, it is observable, is it not?

A. I can't tell what it is marked out.

Q. Hold it up closer and see if you can't read through that. A. I sure can't. I am sorry. [58]

Q. You can't read that? A. No.

Q. Can you read there 524 North Fountain?

A. I can't read that close.

Q. Do you read 524 North Fountain?

A. It looks like a 5 here but the other is—the first does look like a 4 or 5.

Q. From what part is this envelope directed?

(Testimony of Estelle Stokes.)

A. Wood, Cooke and Moulton.

Q. And can you read the year and date stamped; in other words, the cancellation stamp?

Mr. Wood: We object to all of this, if the court please, as wholly irrelevant for any purpose and immaterial.

Mr. Dugan: It is just going to the same matter about his condition.

The Court: Who is it addressed to?

A. Mr. A. E. Stokes.

The Court: Do you know anything about it?

A. No, sir, I do not.

The Court: Well that is enough; she doesn't know anything about it. Ask her if she knows anything about that.

Q. (By Mr. Dugan): I hand you Plaintiff's Exhibit 6 and ask you to state what that is. [59]

A. It is a letter addressed to Mr. A. E. Stokes.

Q. To what address?

A. 524 North Fountain Avenue.

Q. And when is it postmarked if it is postmarked?

Mr. Wood: If the court please, this document will speak for itself and this examination is immaterial.

The Court: It is not addressed to her?

Mr. Wood: It isn't even addressed to her.

Q. (By Mr. Dugan): We just want to find out whether she saw it or received it.

A. No, sir; I did not.

(Testimony of Estelle Stokes.)

Q. Did you still open mail when you were living at 524 North Fountain?

A. Addressed to me, yes.

Q. Was there other mail received you turned over to Mr. Stokes at that address?

A. I did not open any of his mail.

Q. Well was other mail received that you turned over to him?

A. Well his mail went to his Post Office box.

Q. So if it was addressed to 524 North Fountain, would you refuse it? A. Oh, no.

Q. If it was addressed to him? [60]

A. No.

Mr. Dugan: Your witness.

The Court: Is that all?

Mr. Dugan: That is all.

Mr. Wood: No further examination.

The Court: Well we will take a recess until two o'clock this afternoon.

(12:00 noon.)

(Court resumed, pursuant to noon recess, at 2:15 p.m. on December 5, 1955, at which time all parties and counsel were present.)

The Court: All right, gentlemen, you may proceed.

Mr. Wood: The record shows, does it not, that the plaintiff has rested?

Mr. Dugan: Yes. You introduced your first witness.

Mr. Wood: Yes, I knew that but I wanted to be sure the record showed the plaintiffs rested.

Mr. Wood: Mr. A. E. Stokes.

A. E. STOKES

plaintiff, took the stand and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wood:

Q. And as a matter of fact, Mr. Stokes, your hearing [61] has been impaired to a certain extent as a result of your injuries, is that right?

A. It still has.

Q. You are one of the defendants in this lawsuit, are you not? A. Yes, sir.

Q. And you are Mr. A. E. Stokes?

A. Yes, sir.

Q. And Estelle Stokes who testified earlier is your wife, is she not and she is the other defendant?

A. Yes.

Q. And when were you married to Mrs. Stokes?

A. August 11, 1951.

Q. 1951? A. Yes.

Q. You were present in the courtroom here, were you not, this morning when Mr. Reeves testified?

A. I was.

Q. You heard what he had to say? A. Yes.

Q. If I am not mistaken and I don't think that I am he said in substance in answer to some questions that he went to your home in April, 1952, and made a deal, did you hear that testimony?

(Testimony of A. E. Stokes.)

A. I did. [62]

Q. And that is what he said, is it not?

A. Yes.

Mr. Dugan: Now we object that the record speaks for itself in that respect.

Q. (By Mr. Wood): Mr. Stokes, will you please state whether Mr. Reeves was correct in that testimony or mistaken? A. He was mistaken.

Mr. Dugan: I object to that as calling for a conclusion of the witness, improper examination.

The Court: What was your objection?

Mr. Dugan: Your Honor, that it calls for a conclusion and improper reference to other testimony other than being the testimony of this witness.

Q. (By Mr. Wood): I am referring to the particular testimony mentioned with respect to the April, 1952, meeting; I am asking you whether—

The Court: Whether there was such a meeting?

Q. Whether there was such a meeting at that time.

Mr. Dugan: My point is this, he is asking this witness characterize whether the testimony of the plaintiff, one of the plaintiffs, is correct. It might be he believes there might be discrepancy in some particular point, and I do not want the defendant to answer that question by saying [63] it is not correct.

Q. (By Mr. Wood): I was asking whether that meeting occurred or not? A. It did not.

Q. It did not occur? A. No, sir.

(Testimony of A. E. Stokes.)

Q. Was there a meeting between you and Mr. Reeves at any time for the purpose of making a deal either in the spring of 1951 or in the spring of 1952? A. Not in the spring, no.

Q. Then did you have any meeting with Mr. Reeves, we will say then, in the spring of 1952?

A. Yes.

Q. And what was that for?

A. I was giving him additional books and ledgers and information that he had requested.

Q. And when did you give him any other information, books, records or anything of that sort, if you did give him any?

A. In the summer of 1951.

Q. Summer of 1951, but there was no meeting then in April of 1952? A. No.

Q. And did you at both your 1951 and 1952 meetings supply Mr. Reeves with all of the data that he requested? [64] A. I did.

Q. And what did that data consist of?

A. Ledgers, bank statements, cancelled checks, invoices and complete record brought down by my regularly employed bookkeeper.

Q. Did you either in the 1951 or spring of 1952 make any deal so-called with Mr. Reeves with respect to the work he was doing? A. I did not.

Q. When if at all, Mr. Reeves, did you make, or Mr. Stokes, did you make any deal with Mr. Reeves for service by him in connection with tax matters, when? A. September 9, 1952.

Q. And where was that deal made?

(Testimony of A. E. Stokes.)

A. In his office at Dallas, Texas.

Q. And who was present?

A. He was present.

Q. And you? A. Yes.

Q. Nobody else?

A. No. I called in Mr. Isham Nelson later, but he and I discussed it and arranged our deal what he was to charge and what it was to cover and the total charges and all was arranged then between he and I, and I told him at the time——

Mr. Dugan: I object, the last part of that [65] is not responsive to the question, which is what was the deal, and now he is telling as to what was told him on a particular time rather than being the agreement of the parties.

The Court: That might have been part of the deal.

A. It was a discussion between Mr. Reeves and I.

Q. (By Mr. Wood): Well, now be more specific. Will you please state to the court what transpired, if anything, with respect to a deal at the meeting at Dallas, Texas, upon September 9th, 1952?

A. Mr. Reeves had ample time to go over the data and all and arrived at the time it would take for him to put it in the form of a return, tax return, and file it, and he——

Q. May I break in for just a minute before you answer further and then you can go on with that. You are now referring to the items that are listed

(Testimony of A. E. Stokes.)

in this action that has been brought in this court against you?

A. Yes, it was income tax returns for 1946, 1947, 1948, 1949, 1950 and 1951, and to complete the 1952 returns.

Q. Now then, will you please go on and continue your answer to my previous question as to what transpired between you and Mr. Reeves in your September 9th, 1952, meeting with respect to the making of the deal?

A. I told him I would like for him to do the work and all, and I said: "Jim, what are you charging me to complete [66] all the work, all charges and everything? You know I have been critically injured and I have had some big financial reverses, but I will pay you; you can ask anybody about me and I will pay you." He says: "I am your friend and I understand you had a rough time." He says: "We will complete all work, all charges for \$250 per year, regardless of what was done each year we will average it out \$250 a year."

Q. How many years did you say were involved?

A. Well, it would make 7 years or \$1750, and I said: "Well, Mrs. Stokes wants to pay her part right now and all and get hers clear." I said: "You know I can't pay you now, but I will pay you when I can." Which was agreeable.

Q. By the way, did he agree or not agree?

A. He agreed to do it on that basis, \$250 per year for all charges.

Q. For all charges, is that what you said?

(Testimony of A. E. Stokes.)

A. Yes.

Q. Did he then determine or was it determined what Mrs. Stokes should pay for her part?

A. Yes.

Q. How much was it?

A. There was two years' service would be for us both would be \$500, and he said her part would be \$250 and that would settle hers completely in full. [67]

Q. Was that satisfactory to you, did you agree that was the proper arrangement?

A. Yes, half was hers and half was mine and that was satisfactory with me.

Q. Now as to the entire charge was that agreed to by you? A. Yes.

Q. And also agreed to by him?

A. Yes, sir.

Q. And everybody else sitting in on the conference regarding the charges?

A. Well, he and I were the only ones that sat in, but he called in Mr. Nelson after he and I agreed on that and said: "Nelson, is that okay with you?"

Q. Who was Mr. Nelson?

A. That was a partner in this suit brought against me and my wife.

Q. The pending suit in this court?

A. Yes.

Q. In other words, a partner of Mr. Reeves?

A. Yes.

Q. What did Mr. Reeves have to say?

(Testimony of A. E. Stokes.)

A. Mr. Reeves explained to Mr. Nelson the agreement that he and I had arrived at and Mr. Reeves asked Mr. Nelson if that was okay by him and Mr. Nelson said yes, for him to [68] go ahead and handle it.

Q. Was that the extent of the participation by Mr. Nelson in this conference regarding charges to be made? Was that the extent of his participation?

A. Yes, sir.

Q. In other words, he then left the meeting?

A. He left the meeting.

Q. And what if anything was discussed between you and Mr. Reeves or was that all of it?

A. That was all of it and they agreed to complete the work through 1952 for the total charges of \$250 per year.

Q. For 7 years?

A. Yes, or \$1750 and Mrs. Stokes paid hers which was regarded her part.

Q. And you said Mrs. Stokes paid hers, her part, how was it paid?

A. By check on her personal account.

Q. I hand you herewith a document marked for identification Defendants' Exhibit No. 2 and will ask you to look at it if you will, please, and can you see all those dates?

A. Yes, sir.

Q. And is that the check that was given at the time?

A. It is.

Q. Now, Mr. Stokes, was this the check you had with you at Dallas, Texas, and when you saw Mr. Reeves? [69]

(Testimony of A. E. Stokes.)

Mr. Dugan: I object to that on the ground that assumes facts not in the evidence from this witness; he said she paid this check.

Mr. Wood: She what?

Mr. Dugan: She paid this check.

Mr. Wood: Here is the check with her signature on it.

Q. In other words, was this check filled out when you had it in your pocket there at Dallas and talked with Mr. Reeves and was there on it only the maker's name?

A. It was blank check signed by my wife and that is my own handwriting. I dated it September 9th, 1952, and showed it under special account or drawing account for her personal business.

Q. You filled it in?

A. I filled it in with my own fountain pen and handwriting.

Q. And then what did you do so far as the pen is concerned?

A. I endorsed it and handed it to Mr. Reeves.

Q. Do you recognize the other endorsement on this check, Defendants' Exhibit 2?

A. Yes, I recognize his signature.

Q. Whose signature?

A. Reeves, James Reeves.

Q. So that is that endorsement other than yours on it?

A. It says Reeves and Nelson. [70]

Q. But you recognize that as his handwriting?

A. Yes.

(Testimony of A. E. Stokes.)

Q. And this check, Defendants' Exhibit 2, went through the bank and was cashed, was it not?

A. It certainly was and paid as agreed.

Q. What if anything was said in this conference there in the September 9, 1952, meeting with Mr. Reeves about any other items if there were any that you were to pay?

A. There was no additional items or anything to be added, that was the total charges for him to complete through 1952 tax service for me and my wife.

Q. What if anything was said about telephone calls?

A. Everything was included in the \$250 per year price, no interest, nothing; that was total charges for me.

Q. Then if I understand you correctly the total of the 7 years was \$1750 and \$250 indicating balance left of \$1500?

A. Yes, that I was to pay myself.

Q. Do you concede there is that liability of yours unpaid?

A. I do concede that and always have conceded that and will pay that as soon as I am financially able.

Q. In September, 1952, where were you living?

A. Oklahoma City, Oklahoma.

Q. And how long did you stay there? [71]

A. Until April 4th, 1953.

Q. Then where did you go?

A. Sidney, Montana.

(Testimony of A. E. Stokes.)

Q. And you were there for some little time?

A. Yes.

Q. Now after this September 9, 1952, meeting did you have any further conference as such with Mr. Reeves regarding any obligation that you incurred for his work? A. I did not.

Q. Not at all? A. No, sir.

Q. Well then did you discuss the matter of this account with him at any time subsequent to September 9, 1952?

A. State your question again.

Q. Did you have any talk with Mr. Reeves subsequent to September 9, 1952, regarding this account? A. I did not.

Q. Did you or did you not meet him sometime in 1953? A. I did.

Q. That is what I am talking about.

A. I misunderstood your statement.

Q. What occurred in August, 1953, so far as Mr. Reeves is concerned?

A. I went to Dallas, Texas, on September 4, 1953, to see Mr. Reeves. [72]

Q. Why did you go to see him?

A. Because he had filed a suit in federal court in Dallas against me for some extra charges above the \$1500 that I owed him.

Q. As a matter of fact he had filed a suit there for the same items—I will strike that out—referring to Defendants' Exhibit No. 3, Mr. Stokes, is that the suit that was filed in Texas, are those the papers in that suit?

(Testimony of A. E. Stokes.)

A. It is. It is the papers that were served on me.

Q. Where were they served?

A. At Sidney, Montana.

Q. And you are referring now to Defendants' Exhibit 3? A. That is right.

Q. Did you read those papers when they were served on you? A. I did.

Q. And do you notice that they involved a claim by Reeves and Nelson for the same amount that is involved in the present suit pending here?

A. Yes, sir, identical.

Q. And what did you do when those papers were served upon you, meaning that Texas suit?

A. I immediately went to Dallas and went to Mr. Reeves' office.

Q. You were up at Sidney, Montana? [73]

A. Sidney, Montana, and I drove to Dallas, Texas.

Q. And saw Mr. Reeves?

A. Yes, and I asked him.

Q. And what did you discuss with Mr. Reeves at that time and by the way what was the date, August, 1953?

A. It was September 4th, 1953.

Q. Well at that time what did you discuss with Mr. Reeves?

A. Why he had padded that account over the \$1500 that I owed him and we had agreed was the total amount for me to pay when I was able.

Q. And what developed in that conversation? If you will please just tell the court exactly what oc-

(Testimony of A. E. Stokes.)

curred and what the outcome of the conference then was with Mr. Reeves?

A. Mr. Reeves, I asked him why he had padded it and he said: "Hell, you haven't paid anything on it and we have a lot of big expenses and we drilled a barren oil well out here and stuck the pipe," and they had taken over a beer parlor in Dallas and was remodeling and going to big expense there.

Q. And why, what did that have to do with you?

A. And they were just going to have to charge me more for the services rendered.

Q. And what did you say?

A. I says: "I will just go get me an attorney, Jim; we had a gentlemen's agreement and an agreement of \$250 per [74] year and that is what I am going to pay you and that is all. I am going to get me an attorney and we are going to have this out."

Q. Did you do that?

A. Yes, I did, but when I was going out the door he says: "Here, why don't you let Griffis here be your attorney?" And he says: "He won't charge you anything; he can represent us both." And I said: "No, we have an attorney that's represented me for years that I will depend on."

Q. Where?

A. In Dallas, J. Elmore Blakely.

Q. Did you tell Mr. Reeves who the attorney was?

A. No, I didn't tell him then, but I went down

(Testimony of A. E. Stokes.)

and employed Mr. Blakely and he represented me and the suit filed in Dallas it was argued and dismissed.

Q. When was it dismissed?

A. The 28th of November, I believe, but December 1st I received a letter from Mr. Blakely saying it was dismissed.

Q. In what year? A. 1953.

Mr. Dugan: Your Honor, this man speaks too fast. I move to strike the testimony relating to the dismissal as being hearsay and not of this man's knowledge and not the best evidence.

Mr. Wood: It already appears in the record, your [75] honor, the suit was dismissed. This is just confirmation.

Mr. Dugan: Your Honor, I haven't had the opportunity to object before that, your Honor, but it is not responsive to the question put by counsel anyway and he didn't give me an opportunity.

The Court: I don't know whether it is in connection with that question, but it can be divided up if you want to take more time.

Q. (By Mr. Wood): What happened to the Texas suit, Mr. Stokes—Reeves?

A. Stokes you mean?

Q. I am sorry. A. Dismissed.

Mr. Dugan: We object to the testimony of this witness from his recollection of what happened to the suit upon the grounds it is not the best evidence.

Q. If he knows of his own personal knowledge, he can testify as well as anybody else.

(Testimony of A. E. Stokes.)

A. I know personally it was dismissed and Mr. Reeves later confirmed it that they had lost the case, that I had beat them and everything and I have a letter from my attorney.

Q. Now don't go into that at all. After the dismissal of this Texas lawsuit, Mr. Stokes, did you have any contact with Mr. Reeves regarding the account involved? Just say yes or no. [76]

A. Yes.

Q. And when?

A. Some time around the 10th of December, 1953.

Q. And what contact was it, personal or otherwise?

A. He called me over the telephone from Dallas, Texas.

Q. Called you at Sidney?

A. Yes, sir, he called me.

Q. And what transpired, or rather put it this way, what was said in that conversation on the phone?

A. He said: "Here you beat us." And I said: "Yes, I understand that is the result." And he says: "Well, what are you going to do about it?" And I said: "I am going to pay you and I am going to forget this little suit. I will pay you like I said. I have some deals that will be turned soon and I will get you all or a part of your money." And we exchanged greetings, wished each other the best of Christmas and friendly terms.

Q. What did he say?

(Testimony of A. E. Stokes.)

A. I said: "I will pay you what we agreed back on September 9th."

Q. That is what you said.

A. He said: "That is okay, we will do that and settle it off and forget it."

Q. That was when? Did you locate the time exactly?

A. It was around December 10, 1953, after the Texas suit [77] had been dismissed in our favor.

Q. Then what was your next contact if any directly or indirectly with Mr. Reeves and Mr. Nelson?

A. Some 2 or 3 weeks later here comes some papers served on me in Sidney, Montana, on the case being filed at Billings, same case, same figures and everything contrary to an agreement to me over the phone again.

Q. You mean the lawsuit we are now trying before the court? A. That is right.

Q. And the matters have remained in that status ever since?

A. And he would have had his money in February if he didn't file that suit.

Mr. Dugan: I object, that is a self-serving matter, irrelevant and not responsive to the question.

The Court: Yes, let it go out.

Q. (By Mr. Wood): Well then to be specific with respect to that matter, Mr. Stokes, what arrangements if any had you made after this arrangement in December, 1953, by telephone for paying the account?

(Testimony of A. E. Stokes.)

Mr. Dugan: Object to that as irrelevant and immaterial, arrangements he made privately with someone else.

The Court: You mean referring to the telephone conversation [78] about the 10th of December, 1953?

Mr. Wood: Yes, your Honor.

The Court: Well, he has already testified to that.

Mr. Wood: Yes, but I asked him what arrangements he made if any after that conversation to take care of the obligation that was involved.

The Court: That is, if he made any arrangements?

Mr. Wood: Well, if the court please, the understanding in that telephone conversation was that they would stand on the original agreement made.

The Court: Yes, well, carry that further; all right, go ahead.

A. I immediately made arrangements to secure the \$1500 by the sale of some minerals and leases that I had to pay Mr. Reeves.

Q. And then this suit interfered, is that it?

A. That is right.

The Court: What was the amount involved in that suit in Texas?

A. Identical, the same.

Mr. Wood: It is just the same as asked for in this suit.

The Court: In this suit?

Mr. Wood: Yes.

Mr. Wood: Don't make any comment except in

(Testimony of A. E. Stokes.)

answer [79] to questions by inquiries of court or counsel; don't volunteer anything.

Q. (By Mr. Wood): Now what statements if any of this particular account sued upon in this lawsuit did you ever receive from Mr. Reeves or Mr. Nelson, did you ever receive any statements at all? A. I never did.

Q. When did you first learn of the claims by way of an account that Mr. Reeves and his partner are now making, when did you first learn of that?

A. Around in August of 1953.

Q. You mean when this suit was filed in Texas?

A. That is right.

Q. And prior to that time had you received any statements of the account at all from Mr. Reeves or his partner? A. I did not.

Q. So that is when you first learned about it?

A. That is right.

Mr. Wood: You may cross-examine. [80]

Cross-Examination

By Mr. Dugan:

Q. Where were you living in November, 1954, Mr. Stokes?

A. From November, up to November 15, 1954, I lived in Denver, Colorado.

Q. At Denver, Colorado?

A. Yes, and after that I moved to Wichita, Kansas.

Q. And where were you on or about the 22nd of November, 1954, where were you living then?

(Testimony of A. E. Stokes.)

A. I think I was down in Ada, Oklahoma, along about that time because we had gotten possession of the apartment; we got possession the first of December; it was a little apartment but comfortable and we couldn't move in when we got over there.

Q. Do you disagree with your wife you were living at 524 North Fountain in 1954 and 1955?

A. We had not lived there; we had the apartment rented there but we didn't get moved in until——

Q. Until when?

A. 28th or 29th of November.

Q. And you were there then?

A. We had it rented but we were not living there and we bought our furniture and furnished the house, this new apartment. [81]

Q. You recall that your wife testified you were in residence at 524 North Fountain and that she and you were there during the months of December, 1954, and January, 1955, in response to my last question? A. January, 1954?

Q. January, 1955, and December, 1954?

A. December and January we were over——

Q. And you were in residence at 524 North Fountain? A. Yes.

Q. Now I hand you a document marked Plaintiffs' Exhibit No. 5, purporting to be a letter directed by your counsel to you at 524 North Fountain and ask you to state if that is what it is?

A. That is mailed, addressed to A. E. Stokes, 524 North Fountain Street, Wichita, Kansas.

(Testimony of A. E. Stokes.)

Q. Have you ever seen that before?

A. I haven't.

Q. You did or did not receive that through the mail?

A. I did not because we were not, we had it rented but we didn't get possession of it.

Q. I now hand you a document marked Plaintiffs' Exhibit 6 and ask you to state what that is.

A. That is a registered letter to A. E. Stokes, 524 North Fountain Avenue at Wichita, Kansas.

Q. When was it deposited in the United States mails [82] according to the postmark?

A. Well it was in Billings on December 28 and Wichita on December 30th.

Q. Did you receive that document?

A. I did not.

Q. You didn't receive it? A. No, sir.

Q. Have you ever seen the document before?

A. No, sir, I never have.

Q. Where did Mr. Reeves or Mr. Nelson or either of them pick up your records first—where did they first get them?

A. At Gainesville, Texas.

Q. You were living there at that time?

A. No, I was coming through there. I was doing some drilling operations there and they met me there by appointment.

Q. Where was this they met you?

A. At Gainsville there at a court.

Q. A place where you were staying?

A. I was staying there part of the time, my

(Testimony of A. E. Stokes.)

brother-in-law had it rented and I just come there and dropped in there.

Q. They picked up the books then?

A. Part of them up to or preceding up to along in the spring of 1951; the rest of 1951 and 1952 was to be furnished later.

Q. Now prior to that time you had consulted with Mr. [83] Reeves, had you not, as C.P.A. relative to the questions about your income tax, some questions about that over the years, had you not?

A. Yes, since 1946.

Q. From about 1946 and after, and previous to that time you had never actually furnished him any records upon which to draw these returns, nor had you directed him to draw any returns, is that right?

A. That is right.

Q. But on April 16, 1952, you did turn them over first, or a part of them at Gainesville?

A. No, your year is wrong; it was the summer of 1951.

Q. In the summer of 1951?

A. I turned him some more in April of 1952.

Q. Now your original records you furnished him in September, did I understand then that was for the years prior to 1951?

A. It was in the summer I turned him over my ledgers for the business of '46, '47, '48, '49 and '50.

Q. And you say that conference took place in Gainesville when they picked up those records?

A. Yes.

Q. Now was there a later conference or meeting

(Testimony of A. E. Stokes.)

or did either Reeves or Nelson meet you at Gainesville on April 16, 1952? [84]

A. They did not.

Q. So the time you set then by reference to Mr. Reeves' testimony is April 16, 1952, when he first picked up all the records was in fact April, not September, 1951?

A. No, not April, in August, 1951; the records up to '51 and then for 1951 he got them and I took them to him in Dallas, and then when '52 went by in February I took all of '52 to him, and I prepared returns on those in March and they were filed.

Q. All right now answer my question I have just put to you. The conference he testified to about taking place at Gainesville on April 16, 1952, at which time he first picked up the records, this you say actually occurred in August then of 1951?

A. It definitely did.

Q. And at Gainesville? A. It definitely did.

Q. And you say the conference which occurred April 16, 1952, was in his office in Dallas, Texas?

A. What date?

Q. April 16, 1952?

A. It was along in April; I don't know the exact time.

Q. Now between those two dates was there any instruction to prepare the returns for the years '46 through '50 or was that to wait then for the records to be furnished on April 16, 1952? [85]

A. He was to look them over and get them correlated and in order and we would get together to

(Testimony of A. E. Stokes.)

make the deal on the final charge and preparation which we did on September 9th, 1952.

Q. Now prior to April, 1952, the second time he got the records or when he got the balance of the records did you give him or did he have any instructions from you to proceed with the preparation of the 46 to 50 returns or was that to wait the time when you would furnish him with the additional records?

A. When he could get the complete records up.

Q. When you gave these records to him in August, '51, you didn't tell him to go ahead, you said we will get the rest of them to you and then go ahead, isn't that in effect what you said?

A. No, he said we will take these and get them in compiled form so that we can then set them up for connecting entries onto the tax return and also estimate what our charges will be.

Q. Now was nothing said whatsoever on the date of April 16, 1952, relative to whether this was going to be a cash deal, a credit deal or a deal on terms—deal meaning manner of payment for the services rendered and to be rendered, was nothing said at all about that?

A. Well, it was generally understood he was going to [86] have to wait for his money, it was understood the partners would, he and Mr. Nelson would have to wait for their money but they agreed to do it because they knew I would get my business straightened out and pay them.

Q. You didn't have any indication in going and

(Testimony of A. E. Stokes.)

talking to them they would do it for free, you were going to pay them?

A. Certainly I am going to pay for it, still going to.

Q. Either expressly or impliedly in April, 1952, did you discuss the matter or go into the matter in any way concerning what those arrangements were going to be? A. Not definitely.

Q. Well, what did you agree in April, 1952?

A. He agreed to go ahead and get them and work on them and get them in shape and whenever he got it for us we would go down there and arrive at a definite figure and charge.

Q. He was not in a position to give you at that time any final estimate of what the cost would be?

A. That is right.

Q. Now this date, September 9, 1952, you used it repeatedly, how do you know it was September 9, 1952?

A. For the reason that why the check was dated that date and I was in his office on that date.

Q. You know it because the check was dated that date?

A. And I was in his office on that date and he had [S7] written me and called me about the preparation and I went down there for that purpose.

Q. Let me ask you whether or not this conference could have been on the 15th of September?

A. No, it wasn't; it was on the 9th day of September.

Q. How long did you hold this check in your

(Testimony of A. E. Stokes.)

possession before you appeared at Mr. Reeve's office?

A. I got that check on the 8th of September in Oklahoma City in our apartment and I drove down to Dallas and went to his office, arriving the next morning, to make the final agreement with him for them to do the work or I was going to get someone else to do it and I wanted the returns prepared.

Q. Now, I asked you for the date, can you look at that check and tell us what date it was cleared through the bank?

A. It's got a date here of 9/17/52. There's some more dates on this. They deposited it in the Mercantile National Bank, here is Empire State Bank. I am trying to get the exact date they put it in there.

Q. Well, it isn't that important. My point in asking is could your conference have been later than the 9th, could it have been the 15th?

A. No; it was not the 15th, Mr. Dugan.

Q. But the conference that you are referring to in your testimony is September 9th and is the same conference [88] that Mr. Reeves referred to as the date of September 15th in his testimony?

A. Yes; that is the check; it was made on September 9th and not the 15th.

Q. Now, you said after that date of September 9, 1952, until the date of the service on the first suit, the suit in Texas against you, you never had another conference with these people, with Reeves or Nelson, is that right, you never had another

(Testimony of A. E. Stokes.)

meeting with them? A. No; I didn't state that.

Q. Well, what did you do? Tell me, then did you have another meeting with them following this?

A. I did.

Q. And when and where was that?

A. Well, I was in Dallas several times and the final meeting with Mr. Reeves before the Texas suit was filed was on April 3, 1953.

Q. The very date this instrument bears that has been introduced in evidence, April 3rd?

A. What instrument?

Q. Plaintiffs' Exhibit 4, April 3, 1953?

A. I don't know what the instrument is.

Q. You were in Dallas on April 3, 1953?

A. I was.

Q. Was that for the purpose of signing up and filing [89] these income tax returns?

A. No; they had been signed and filed a few days before that. That was for the purpose of Mr. Reeves and Mr. Nelson and I going over to the Collector of Internal Revenue and going over certain items with them and talking with them and we did see three and went over a matter and the gentlemen went back and had a conference and then I left and started back to Oklahoma City.

Q. In fact that date, April 3, 1953, was the date of the signing up, the successful winding up of the service rendered by the plaintiffs in this action; is that right? A. That is right.

Q. And on that date, Mr. Reeves, also, you were handed a statement, were you not?

(Testimony of A. E. Stokes.)

A. I was not handed a statement.

Q. By Mr. Reeves or anyone else?

A. I wasn't handed a statement.

Q. You did not receive a statement in hand?

A. I did not.

Q. For how long were you with Mr. Reeves on the date, April 3, in making these filings and talking to the representatives of the Bureau?

A. There was no filings, Mr. Dugan, we together—I got in there nine o'clock in his office and he tried to call someone and they returned and he called back and we were [90] there an hour or hour and a half and we came back and went to the coffee shop and had coffee and I told them goodbye; they wished me well and they said they would let me know.

Q. You did go out to the office of Mr. Hollister and talk with him for some three hours or so?

A. Of Mr. who?

Q. Mr. Hollister of the Bureau?

A. That is the Internal Revenue; we were there about an hour or hour and a half.

Q. You were there considerable time?

A. In the morning between nine and noon.

Q. And the returns were successful and finding no tax due? A. That is right.

Q. Then in fact you got a refund, didn't you?

A. Yes, sir.

Q. And then do you recall promising Mr. Reeves that you would pay him out of that tax refund when received? A. I recall.

(Testimony of A. E. Stokes.)

Q. Apply it against the expense?

A. I recall he asked me if we couldn't give him that; I said, "No, half of it belonged to Mrs. Stokes, and half would come to me." And I says: "Jim, after I am in shape financially I will send you my half."

Q. If you are in shape?

A. After I am in shape financially. [91]

Q. You didn't promise him absolutely you would pay him out of that income tax return?

A. No; I didn't.

Q. Then when did you receive the income tax refund?

A. On May 16, 1953, we got part and on the 28th we got the other part of 1952.

Q. Of June?

A. No; of May. The 16th of May, 1953, we got the '51 return and then about two weeks later we got the '52 return.

Q. Now, you say you did receive through the mail in July, 1953, at Sidney, Montana, the statement in question in this case which has been marked Plaintiff's Exhibit No. 1 addressed to you and to Mrs. Stokes or the original of that?

A. I did not.

Q. You didn't receive it? A. No; I didn't.

Q. And your box was what?

A. 272 and then 276.

Q. In Sidney, Montana?

A. Sidney, Montana.

(Testimony of A. E. Stokes.)

Q. How large a city is Sidney, Montana?

A. About 4,000.

Q. Were you known in Sidney?

A. Yes, sir.

Q. Well known? [92] A. Yes, sir.

Q. You received mail I presume at your Post Office box and home address?

A. I got all other mail; I don't know why I didn't get it.

Q. In July, 1953, how long had you been residing prior to that in Sidney?

A. From about the 9th or 10th of April, 1953.

Q. Had you had a residence there in previous years? A. No.

The Court: We had better take a recess.

(3:00 p.m.)

(Court resumed, pursuant to recess, at 3:20 p.m., at which time all parties and counsel were present.)

A. E. STOKES

resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Dugan:

Q. Mr. Stokes, going back to the matter of the payment of the \$250 on this account by check in blank, I understood you to say that she wanted to pay by check and then you followed up by an explanation it was presented to Mr. Reeves without

(Testimony of A. E. Stokes.)

her being present at all a check which you filled out and which had previously been handed you in blank and you [93] filled it out for the amount of \$250; is that correct?

A. Yes; I filled it out before him and filling it out for that amount here shown.

Q. At the time that check was paid there it bears the date September 9, 1952; at that time the returns for Estelle Stokes and for yourself as far as that is concerned were not yet prepared, were they?

A. They weren't finished.

Q. They weren't prepared at all?

A. He looked it over and had it pretty well patched up; he had possession of the books and ledgers and bank deposits and cancelled checks and had everything in front of him, and he agreed on September 9th.

Q. Answer my question, whether they were substantially completed, particularly the returns for Estelle Stokes, your wife, for the years, '51 and '52, in September, 1952?

A. He could have completed down to '51, he could not have '52 completed but he agreed to finish it all up.

Q. Please don't go beyond the question put to you. Tell me whether or not they substantially could, they weren't were they—the '51 might have been but the '52 could not have been?

A. No; it was not.

Q. And at that time this payment was for serv-

(Testimony of A. E. Stokes.)

cies to be rendered in the future; is that [94] correct?

A. Covered service through '52, completion of hers and mine through '52 was the fee arrived at at \$250 per year, and we had been married two years which would be a total of \$500 for those two years, and I asked him what her part would be and he said half and I said all right here is payment of this with the \$250 then, and that is what I did.

Q. Now, that wasn't a response to any previous demand on his part for the work done previously?

A. No; that was settled and I said, "Now, Jim, what are you going to do this for? What are you going to complete it for?" I says, "What kind of prices do you want now to complete all work through '52?" and we agreed at \$250 per year figure.

Q. Did he give you a receipt for that payment by check?

A. No; the check speaks for itself.

Q. Did you note on it that it was in full for services rendered to Estelle Stokes?

A. No.

Q. To be rendered to Estelle Stokes?

A. No, sir.

Q. I ask you to take another look at it?

A. No; I didn't.

Q. You didn't get a receipt from him? You didn't get any kind of writing for this purported settlement, then, nothing at all? [95]

A. No; that is all that is necessary; the check

(Testimony of A. E. Stokes.)

was receipt enough. I trusted him on my reports from '46.

Q. And likewise he trusted you for payment and furnishing him with all the true details of your business transactions?

A. We were what you call business friends is the way I considered it.

Q. But this was work to be done in the future with regard to a particular segment of the work, was it not?

A. The finishing up of '52, Mr. Dugan.

Q. Now, I think if I have correctly taken down notes of your testimony with regard to this conversation at the office of Mr. Reeves at Dallas on September 4, 1953, after suit had been filed against you in the Texas court I believe you want the court to believe that immediately after you received service of the papers in that case you went to the office of Mr. Reeves and asked him why he had padded the account and that he said to you, "Well, we have been remodeling a beer tavern and we have a shallow oil well and we just have to charge you more." And that was his response? A. Yes.

Q. That is all?

A. That is right, and "We need money and we have to charge more for ourselves."

Q. And this is the same time then as you have indicated before?

A. That is right, and he took me to that beer parlor and [96] showed to me his remodeling job.

Q. And then you couldn't get together and he

(Testimony of A. E. Stokes.)

suggested to you you could go to his attorney who filed the suit and that his attorney, Yale Griffis, could represent both of you in the action; is that right? A. That is what he said.

Q. And that is what you would like to have the court believe? A. That is exactly right.

Q. But instead, you went to Blakely, a man by the name of Blakely, and you got the suit dismissed?

A. I certainly did.

Q. Now, since that is in the record do you have with you the appearance papers or copies of the appearance papers on which you made your appearance in the Texas action?

A. You mean the answer filed or the papers served on me.

Q. Appearance——

A. The only papers I have were served on me.

Q. That were served on you, you don't have copies of the appearance made for you by Mr. Blakely?

A. No; I don't have it in my possession.

Q. So when you say you got the suit dismissed and testify to the disposition of the suit, actually you haven't anything in your hands now to present this court yet in the way of proof of what happened in that court why it was dismissed [97] or anything of the kind?

A. Yes; I have a letter from Mr. Blakely saying it was dismissed and I personally did not hear from it further.

(Testimony of A. E. Stokes.)

Q. Now, I didn't ask you that. I asked you what papers you have.

A. I have a paper from Mr. Blakely advising me it had been dismissed.

Q. I asked you if you have the papers?

A. Yes, sir.

Q. Do you have a copy of your appearance in that suit in Texas?

Mr. Wood: He has already answered that question; I object, it is repetitious.

Mr. Dugan: I have got to go back over it; he says he has papers.

Q. Do you have a copy of the part dismissing it? A. No; I don't have it with me.

Q. At the time that suit was commenced in the State of Texas you were in fact a resident of Oklahoma City and then removed to Sidney, Montana; isn't that correct? A. Pardon?

Q. At the time that Texas suit was filed you were then residing in Oklahoma City and then removed to Sidney, Montana, isn't that correct?

A. No. [98]

Q. What is correct in that respect?

A. I was living at Sidney, Montana, when it was filed.

Q. And service on that suit was made at Sidney, Montana? A. That is right.

Q. Outside of Texas, in other words?

A. Yes.

Q. Did you ever appear and testify in court in

(Testimony of A. E. Stokes.)

that case down in Texas? A. No.

Q. Your attorney appeared for you?

A. My attorney appeared for me.

Q. Now with respect to this conversation you say you had upon Mr. Reeves' call which was on December 10, 1953, did I understand you to say that he said, "You pay me what we agreed on back on September 9, 1952"? A. That is right.

Q. He said that in those words? A. Yes.

Q. In those exact words? A. Sir?

Q. In those exact words?

A. State it again.

Q. Were those the exact words, "You pay what we agreed back on September 9, 1952"?

A. No; it wasn't worded that way. [99]

Q. How was it worded?

A. The best I can recall it he says, "Well, we can just forget what happened and go back to the agreement of September 9th down there and you pay that and everything will be fine."

Q. He mentioned the date, September 9, 1952?

A. Yes.

Q. He mentioned that specifically?

A. Yes; he said the date we made our agreement in Dallas.

Q. Did he mention the date, September 9, 1952?

A. I wouldn't be positive he mentioned the date but he told me, "We will go back to the first agreement for the total work done down here in Dallas," and says, "You pay that and we will just let the thing be settled in full."

(Testimony of A. E. Stokes.)

Q. "The agreement we made in Dallas"?

A. Yes.

Q. Did he give you a date on that?

Mr. Wood: He has already answered that question.

The Court: You are not getting anywhere on that proposition. He says the agreement in Dallas and he told you again the agreement in Dallas was made and when he was in Dallas.

Q. (By Mr. Dugan): Did he refer to any other incident to connect up [100] which agreement you were talking about in Dallas?

A. Nothing more than he said, "Let's go back to the agreement we had in Dallas for the total payment of everything." And he said, "You pay that and that will be fine." He wanted to know how I was getting along and we exchanged Christmas greetings and hung up. That is all there was to it, and I turned around to Mrs. Stokes and told her, "I am going to go and pay Jim just exactly what we agreed on."

Q. You said, did you not, in April of 1953, you had no agreement or understanding with regard to the bill other than what you have previously stated?

A. That is right.

Mr. Dugan: Your witness.

Mr. Wood: No redirect. You are excused.

Mr. Wood: The defendants rest.

The Court: Any rebuttal?

Mr. Dugan: Yes, your Honor, I want to put Mr. Reeves back on the stand and before I do that there

is a short matter I would like to take up with Mr. Wood.

Mr. Wood: We may save some time by talking it over; I don't want to be technical about it.

Mr. Wood: Suppose I dictate something? It is stipulated between counsel that Plaintiffs' Exhibits 5 and 6 are original documents and that the endorsements thereon [101] are all original documents but counsel for the defendants objects to the introduction of the said exhibits into evidence and to each of the exhibits upon the ground that each exhibit is not only irrelevant and immaterial but incompetent otherwise.

Mr. Dugan: Now, your Honor, I might say in that connection the sole reason for interrogation of several of the witnesses in regard to these documents and the offering of these documents into evidence is in respect to the residence of the defendants which we went into on, that the defendants went into on their case relative to the injuries and condition resulting from the injuries left with the court in the earlier motions for continuance; the court recalls evidence of illness and so forth bearing on his good faith and these are bearing on the question of bad faith.

The Court: As I remember the defendants said they weren't living there at the time and they never received them, that while they have rented premises in the apartment there was some furniture being put there or something to that effect, that they weren't living there and that they never received those documents, as I recall the testimony.

Mr. Dugan: May I refresh the recollection of the court. Mrs. Stokes said they were living there December, [102] 1954, and January, and Mr. Stokes said they lived there in December and January, and document No. 5 contains a return endorsement dated at Wichita, December 14. The document No. 5 bears an endorsement cancellation, Billings, December 28th, and return receipt from Wichita, December 30, and return to Billings, January 7, 1954, and 1955, respectively, so I believe they are within the scope of that.

The Court: You think they cover the time they are in residence?

Mr. Dugan: In residence; yes, your Honor.

Mr. Wood: We still object if you offer it in evidence.

The Court: I don't know, you say you wanted to offer it in evidence as bearing upon the question of good faith; I think it is rather farfetched. I think I will have to sustain the objection.

Mr. Dugan: Very well, your Honor.

Mr. Dugan: Plaintiff calls himself on rebuttal.

Rebuttal

JAMES H. REEVES

resumed the stand and testified as follows:

Direct Examination

By Mr. Dugan:

Q. Mr. Reeves, you were sworn in earlier testimony in [103] this case? A. Yes, sir.

(Testimony of James H. Reeves.)

Q. Were you present at any conference between the two defendants at which one instructed the other to furnish you with a check and pay you any amount on this account? A. No.

Q. Did you see a check presented to you by Mr. Stokes before it was filled in on September 9, 1952, or whereabouts?

A. The best I recall is that the check had previously been signed by Mrs. Stokes, in fact I am sure it had and he filled it in at that time.

Q. Filled it in and what did it bear on it, just the signature?

A. As I recall it was made to A. E. Stokes, \$250 and signed by Estelle Stokes, Estelle Parker, or something.

Q. Did you receive that check pursuant to any understanding or agreement with the defendant, A. E. Stokes, it was the payment only and entirely of Estelle Stokes' obligation?

Mr. Wood: Now, if the court please, that is leading and suggestive; let the witness testify.

Mr. Dugan: I believe the objection is well taken, your Honor; I will change the form of that question.

The Court: Yes.

Q. (By Mr. Dugan): When the check in the amount of \$250 was presented [104] to you what was it in response to?

A. It was in response to request for payment by me to Mr. Stokes. In other words, I asked him to pay me some money on account.

(Testimony of James H. Reeves.)

Q. Did he say anything to you during the time of that conference about this being only, payment only of the Estelle Stokes account?

Mr. Wood: I still object to this line of examination as leading and suggestive.

The Court: Yes; it is redirect. You can examine the witness you are examining unless you are using him in rebuttal to show something that has been testified that didn't occur or something has been said that did not occur and then you should put it in the language and refer to the time, place and circumstance under which that was said; if you are using it in rebuttal to impeach the testimony of the other witness, the defendant.

Q. (By Mr. Dugan: Do you recall the testimony of or did you hear the testimony of A. E. Stokes on the stand here? A. Yes.

Q. Do you recall him testifying with respect to a conference with you at your office on September 9, 1952? A. Yes, sir.

Q. And testifying that you and he argued upon the [105] sum of \$250 as full payment of the obligation of Mrs. Stokes?

The Court: Covering the period of——

Q. (By Mr. Dugan): Covering the preparation of returns for her alone, did you agree upon any such? A. No, sir.

Q. Was that matter mentioned in your presence?

A. No, sir.

Q. At that time or any other time?

A. No.

(Testimony of James H. Reeves.)

Q. Had you previous to April 6, 1952, taken into your possession the books of account or other records of either of the defendants? A. No, sir.

Q. When did you get it?

A. April 16, 1952, at Gainesville, Texas.

Q. Do you recall the testimony of Mr. Stokes you contacted them in around August or September of 1951? A. Yes.

Q. At Gainesville, were you present at Gainesville at that time? A. No, sir.

Q. Do you believe that the check of September 9th was drawn and received by you on the date it bears? A. Yes; I do. [106]

Q. You think it was September 9th, 1952?

A. Pardon me. I think I had spoken to Mr. Stokes in Oklahoma City a day or two before so I think it was on that day or around there.

Q. Did you at that time make an estimate or make an agreement with him that you would do the audit work involved in all of these returns at \$250 per year's rate? A. No, sir.

Q. Did you enter into any such agreement?

A. No, sir.

Q. Did you make an estimate at that time?

A. Yes; I did.

Q. At that time how much of the work had been done?

A. It was still in pretty rough shape.

Q. What do you mean by that, will you explain that to the court so that the court can get an idea whether at that time you could or could not deter-

(Testimony of James H. Reeves.)

mine what a reasonable charge would be for the work? A. Will you repeat the question?

Q. Will you explain to the court what you mean by in rough shape at that time?

A. We hadn't progressed very far with the work, we hadn't done a great deal on it.

Q. Were you in position to make an estimate final and binding upon you as to the cost of the operation charged, [107] could you make one?

A. I have been in the practice since '39 and I have never made an estimate on that basis to anybody.

Mr. Wood: That is objected to as not responsive to the question and ask that it be stricken.

A. I made an estimate and told Mr. Stokes a small business set of records normally would require an audit fee of \$300 per year but I would do his work on the basis of \$35.00 per diem, and that is the way it worked out.

Q. In fact did you agree that any particular sum would cover all expenses? A. No, sir.

Q. Did you know at that time what your expenses would be in connection with this?

A. I had no idea.

Q. Mr. Stokes has denied receiving Plaintiffs' Exhibit No. 4, the original of Plaintiffs' Exhibit No. 4 at any time; now can you tell the court the circumstances under which you gave Mr. Stokes that particular statement, to the best of your recollection?

A. Mr. Stokes came to Dallas on April 3rd at my

(Testimony of James H. Reeves.)

request because we were then in shape to file those income tax returns and I wanted him present in the conference, and anticipating his arrival I had the bill prepared; and as I recall we gave it to him after we returned from [108] Mr. Hollister's office. Mr. Stokes, my partner and myself went to Mr. Hollister's office and when we got back to the office I presented a bill to Mr. Stokes in his hand.

Q. You saw him take it? A. Yes; I did.

Q. Do you recall he left the office with it?

A. As I recall he checked it.

Q. Did he examine it in your presence?

A. Yes; he took and looked at it.

Q. You can recall and you can state to the court you recall him examining it in your presence?

A. Yes; I do.

Q. Now, on September 4, 1953, did Mr. Stokes call at your office in Dallas? A. Yes.

Q. And at that time did he make any objection to the account as to the amount?

A. No; he did not.

Q. At that time the matter had been in suit or was in suit? A. It was.

Q. What did he object to?

A. He objected to having a lawsuit filed against him.

Q. What did he say when he came to the office?

A. He said he had \$150 and would either pay me if I [109] dropped the lawsuit or he would hire an attorney to fight it.

(Testimony of James H. Reeves.)

Q. \$150? A. \$150.

Q. What did you say to that?

A. I told him no go.

Q. Was there any further conversation had at that time?

A. Yes; there has been something about the situation about Mr. Griffis, there, an attorney in the office with me, he was there at the time and Mr. Stokes at one time in the conversation he suggested that he had no interest in fighting the lawsuit, and I made the suggestion that he let Mr. Griffis represent us all in the matter and that Mr. Griffis could hold the matter on the docket pending settlement.

Q. Were you discussing settlement at that time?

A. Frankly, no, sir, because Mr. Stokes only had \$150 he wanted to pay me and I wouldn't take it; it was offered to me on several different times.

Q. Was that \$150 offered to you in reduction of the entire account or was it just simply to be applied on account? A. On account, sir.

Q. Do you recall any such telephone conversation on December 10, 1953, as has been related by the defendant, A. E. Stokes?

A. Sir, it is quite likely that I may have called him [110] at any time to collect my money but as to the content of the conversation other than I was asking him to pay me I can't recall.

Q. Well, can you specifically—did you say in a telephone conversation to Mr. Stokes at Sidney on or about the 10th day of December, 1953, "Well, you beat us, we can go back to the"—words to the

(Testimony of James H. Reeves.)

effect, "we can go back to the agreement we made at Dallas"? A. No.

Q. Did you discuss anything with respect to the statement of the account?

A. I remember there was something was said about the trial and I do remember him saying that we beat you and so forth, and I think I rejoined.

Q. Did you say that or did he?

A. I think I rejoined with we are just getting started and I was still asking for payment of my fee which is all I wanted.

Q. Did you refer to any agreement made at Dallas? A. No, sir.

Q. Let me go back to the date September 9, 1952, and ask you whether you at that time expressed or had any concern for him with respect to the matter of financial reverses and accordingly gave him a cut rate, agreed upon any kind of cut rate as he testified to? [111] A. No, sir.

Q. With respect to the discrepancy between Post Office Box 272 claimed to be the Post Office address of the defendants at Sidney, Montana, in early 1953, and Plaintiffs' Exhibit 1 showing Post Office Box 276 had you previously sent mail to the same address shown on this statement? A. Yes.

Q. Directed to the defendants? A. Yes, sir.

Q. And had you received responses to that?

A. Yes.

Q. Did you receive the return of the envelope containing this original of Plaintiffs' Exhibit No. 1?

(Testimony of James H. Reeves.)

A. No, sir.

Q. Did it bear a return address?

A. Yes, sir.

Q. On the outside of the envelope?

A. Yes, sir.

Mr. Dugan: Your witness.

Mr. Wood: No cross-examination.

Mr. Dugan: Plaintiff rests.

Mr. Wood: Would the court like a record?

The Court: That is all. How much time would you want after that for your briefs?

Mr. Dugan: I am at a loss, will the court [112] want findings of fact and conclusions of law and briefs in connection with that in a matter of time?

The Court: Yes; you can submit proposed findings of fact and conclusions of law, but how much time do you need for that and your brief? Your brief is the principal thing so far as the court is concerned.

Mr. Wood: Shouldn't the brief be delayed until we have the record to refer to?

The Court: Yes; after you get the transcript.

Mr. Wood: He is asking you how much time.

Mr. Dugan: I suppose 10 or 15 days. I really don't have in mind what the court is going to need on this matter.

The Court: The court will need a transcript of this and then after you gentlemen have seen the transcript and looked it over or read it over, but upon receipt of it how much time would you need for briefs, 20 or 30 days?

Mr. Dugan: I would say, not in excess of 20 days.

Mr. Wood: 20 is fine.

The Court: All right, 20 days upon the side on receipt of the transcript of the testimony and you may have 10 days for reply, the plaintiff may have 10 days for reply if he thinks it is necessary.

Mr. Wood: In other words, the plaintiff will file the first brief and we will have 20 days thereafter, and [113] then he will have 10.

Mr. Dugan: Your Honor, the proposed findings of fact and conclusions of law will that accompany the brief?

The Court: Yes; you will both submit findings of fact and conclusions of law from your standpoint.

The Court: Very well, I think that is all.

(Court adjourned.) [114]

Certificate

United States of America,
State of Montana—ss.

I, Sidney O. Smith, do hereby certify that I am the Official Court Reporter in the foregoing-entitled Court; that the foregoing-annexed transcript is a full, true and correct transcription of the proceedings had in Civil Cause No. 1570, James H. Reeves, et al., vs. A. E. Stokes, et al., at Billings, Montana, on December 5, 1955; that the proceedings were recorded in shorthand and transcribed on the typewriter by me.

Dated this 4th day of April, 1956.

/s/ SIDNEY O. SMITH,
Official Court Reporter.

[Endorsed]: Filed May 31, 1956. [115]

[Title of District Court and Cause.]

Certificate of Clerk

United States of America,
District of Montana—ss.

I, E. Warren Toole, Clerk of the United States District Court for the District of Montana, do hereby certify that the annexed papers, to wit:

Complaint on Account.

Summons.

Alias Summons.

Amended Answer of Defendant, A. E. Stokes.

Amended Answer of Defendant, Estelle Stokes.

Judgment.

Notice of Appeal.

Bond for Costs of Appeal.

Stipulation.

are the originals filed in Case No. 1570, James H. Reeves, et al., plaintiffs, vs. A. E. Stokes, et al., defendants, and designated by the parties as the Record on Appeal in said cause; and I further certify that I transmit herewith as a part of the

Record on Appeal, the Reporter's Transcript of Record, filed on May 31, 1956, and the original exhibits which were received in evidence and called for in the designation, said exhibits being Plaintiffs' Exhibits Nos. 1 and 4, and Defendants' Exhibits Nos. 2 and 3.

Witness my hand and the seal of said Court at Great Falls, Montana, this 24th day of October, A.D. 1956.

[Seal] E. WARREN TOOLE,
Clerk as Aforesaid;

By /s/ C. G. KEGEL,
Deputy Clerk.

[Endorsed]: No. 15354. United States Court of Appeals for the Ninth Circuit. A. E. Stokes and Estelle Stokes, Appellants, vs. James H. Reeves and Isham P. Nelson, Jr., Doing Business as Reeves and Nelson, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Montana, Billings Division.

Filed October 29, 1956.

Docketed November 8, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15354

JAMES H. REEVES and ISHAM P. NELSON,
JR.,

Appellees,

vs.

A. E. STOKES and ESTELLE STOKES,

Appellants.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

The Appellants in the above-entitled action having appealed to the above-named Court from judgment in said action entered by the District Court for the District of Montana, the said Appellants now, in compliance with Rule 17(6), of the rules of practice of the above-named Court, present the following, to wit:

I.

Statement of Points Upon Which Appellants
Intend to Rely

1. That the action should have been dismissed as to each defendant in the lower Court—the Appellants here—because of lack of jurisdiction of the Court in the premises;

2. That the plaintiffs below, the Appellees here, have not established the right under the record, to

recover on the pleaded account against either of the defendants, the Appellants here;

3. That, under the record, it affirmatively appears that judgment should have been rendered in the lower Court in favor of the defendants, the Appellants here, and that the action should have been dismissed.

II.

Designation of the Record Which Is Material to the Consideration of this Appeal

All of the pleadings in the lower Court and the balance of the record, all as set forth in the stipulation of counsel, made in the District Court in the above-entitled action, and bearing date of October 19, 1956.

No Assignment of Errors was submitted in the lower Court, under rule 75(d), of the Federal Rules of Civil Procedure, in that the designation, by stipulation, in the lower Court, of the record, is a designation of the complete record of all of the proceedings taken in the lower Court in the above-entitled action.

Dated November 12, 1956.

/s/ STERLING M. WOOD,
Attorney for Appellants.

Service of copy acknowledged.

[Endorsed]: Filed November 14, 1956.

